

In The Matter Of:

*Bobby Lewis and Michael Del Vecchio v.
Alabama Department of Environmental Management*

May 31, 2016

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Min-U-Script® with Word Index

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1 BEFORE THE
2 ALABAMA ENVIRONMENTAL MANAGEMENT
3 COMMISSION

4 BOBBY LEWIS and MICHAEL DEL
5 VECCHIO,

6 Petitioners,

7 v. DOCKET NO. 16-01

8 ALABAMA DEPARTMENT OF
9 ENVIRONMENTAL MANAGEMENT, SOLIDWASTE DISPOSAL
10 Respondent, FACILITY PERMIT
11 No. 35-06

12 CITY OF DOTHAN, ALABAMA,

13 Intervenor.

14 * * * * * * *

15 Volume I of the hearing for the above-styled
16 action was taken before Patrick R. Miller,
17 Alabama Certified Court Reporter, No. 2037, as
18 Commissioner, on Tuesday, May 31st, 2016,
19 commencing at approximately 9:00 a.m., at the
20 Alabama Department of Environmental Management,
21 in the Alabama Room, 1400 Coliseum Boulevard,
22 Montgomery, Alabama.

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1 * * * * *

2 APPEARANCES (continued)

3

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14 Also Present:

15

16 Mr. Bobby Lewis

17

18 Mr. Michael Del Vecchio

19

20 Mr. Phillip D. Davis, PE

21

22 Mr. Daniel Wells, PE

23

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1 * * * * *

2 APPEARANCES

3

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**Bobby Lewis and Michael Del Vecchio v.
Alabama Department of Environmental Management**

May 31, 2016

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1	*	*	*	*	*	*	*	*	1	*	*	*	*	*	*	*	*
2	EXHIBIT INDEX								2	HEARING OFFICER. All right. We							
3	MARKED								3	are on the record. Ladies and							
4	Exhibit								4	gentlemen, this is a matter before the							
5	J-1	01/08/2016 - Modified Permit							5	Alabama Environmental Management							
6	J-3	Pt. I, 01/13/2015 - Permit Modification Application, Operations Manual							6	Commission styled Bobby Lewis and							
7	J-3	Pt. II, 01/13/2015 Permit Modification Application, Static Stability Analysis							7	Michael Del Vecchio -- did I pronounce							
8	J-3	Pt. III, 01/13/2015 Permit Modification Application, Drawings							8	that correctly -- who are the							
9	J-3	Pt. IV, 01/13/2015 Permit Modification Application, City of Dothan Application							9	Petitioners versus Alabama Department							
10	J-3	Pt. V, Permit Modification Application, Fee Sheet							10	of Environmental Management who is the							
11	J-3	Pt. VI, 01/13/2015 Permit Modification Application, Addendum Email							11	Respondent, and the City of Dothan,							
12	J-3	Pt. VI, 01/13/2015 Permit Modification Application, Addendum Email							12	Alabama, who is an Intervenor. And we							
13	J-7	09/02/2014 Letter from Corps to City of Dothan							13	had a brief off-the-record discussion							
14	J-9	04/27/2015 Joint Public Notice							14	before we started and agreed that all							
15	J-11	Document titled, Solid Waste Disposal Facility Permit, Issuance Date, 10/21/2013							15	the parties decided to waive opening							
16	P-3	E-mail with attached Public Notice							16	statements, so we will begin with the							
17	P-4	Colored map showing proposed impacts							17	Petitioners' first witness shortly.							
18									18	Before we do that, if you don't mind,							
19									19	if you could introduce everybody at							
20									20	your conference -- at your counsel							
21									21	table, so that I'll know who they are,							
22									22	and the court reporter will need that							
23									23	information -- that will help as well.							

Page 6									Page 8								
1	*	*	*	*	*	*	*	*	1	David, if you'll go first, that							
2	EXHIBIT INDEX (continued)								2	would be good.							
3	P-5	Group of maps titled, Major Modification Plans for the Dothan Landfill for the City of Dothan							3	MR. LUDDER: Yes. My name is David							
4	P-6	Group of documents titled, Chapter 335-13-4 Permit Requirements							4	Ludder. I represent the Petitioners,							
5	P-7	Group of documents titled, Chapter 335-13-1 General Provisions							5	Bobby Lewis and Michael Del Vecchio.							
6	I-1	January 22nd, 1988 deed conveying land from Bernice K. Lewis to Bobby R. Lewis							6	HEARING OFFICER: All right. Thank							
7	I-2	February 12th, 1973 deed conveying land from S.T. and Bernice Lewis to the City of Dothan							7	you.							
8	I-3	Document titled, Warranty Deed, Joint tenants with Right of Survivorship							8	MR. CARTER: My name is Todd							
9									9	Carter. I represent the Department,							
10									10	and at the counsel table, I have							
11									11	Phillip Davis, the Chief of Land							
12									12	Division, and Attorney Chris Sasser,							
13									13	also representing the Department.							
14									14	MR. WHITE: I'm Len White,							
15									15	representing the City of Dothan. We							
16									16	have Ernie Stokes, Chief of Civil							
17									17	Engineer --							
18									18	MR. STOKES: Senior Civil.							
19									19	MR. WHITE: Senior Civil. Excuse							
20									20	me. City of Dothan.							
21									21	HEARING OFFICER: All right. Are							
22									22	we ready to proceed?							
23									23	MR. LUDDER: Your Honor, I have a							

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<p>1 preliminary motion.</p> <p>2 HEARING OFFICER: Okay.</p> <p>3 MR. LUDDER: The Petitioners</p> <p>4 request that Your Honor invoke the</p> <p>5 sequestration rule for witnesses to</p> <p>6 exclude them from the hearing room and</p> <p>7 also to instruct them not to</p> <p>8 communicate with anybody about prior</p> <p>9 testimony.</p> <p>10 HEARING OFFICER: All right. Any</p> <p>11 response to that request for the rule?</p> <p>12 MR. WHITE: If that rule be</p> <p>13 granted, we'd like to substitute</p> <p>14 representatives, Judge.</p> <p>15 HEARING OFFICER: All right.</p> <p>16 MR. WHITE: Forgive me if I call</p> <p>17 you "Judge." I'm just --</p> <p>18 HEARING OFFICER: That's fine. You</p> <p>19 can call me whatever you want. Well,</p> <p>20 almost. How about that?</p> <p>21 All right. Well, I will grant that</p> <p>22 request. I will invoke the rule.</p> <p>23 Ladies and gentlemen in the audience,</p>	<p>1 somebody sneaks in the back on you and</p> <p>2 you not know it, I'll try to -- I'll</p> <p>3 try to help you with that as well.</p> <p>4 All right. Anything else on that</p> <p>5 subject?</p> <p>6 MR. LUDDER: And that a party</p> <p>7 representative be excluded?</p> <p>8 HEARING OFFICER: Yes -- no, I'm</p> <p>9 going to allow a party representative</p> <p>10 here.</p> <p>11 MR. LUDDER: That's what I meant.</p> <p>12 Excluded from the rule.</p> <p>13 HEARING OFFICER: Yes. Excluded</p> <p>14 from the rule.</p> <p>15 MR. LUDDER: Yes.</p> <p>16 HEARING OFFICER: I thought you</p> <p>17 meant excluded from the room.</p> <p>18 MR. LUDDER: Yeah.</p> <p>19 MR. WHITE: For the record, we have</p> <p>20 Daniel Wells, the city representative.</p> <p>21 HEARING OFFICER: Mr. Wells? Is</p> <p>22 that right?</p> <p>23 MR. WELLS: Yes, sir.</p>
Page 10	Page 12
<p>1 that means if you are scheduled to</p> <p>2 testify in this case, you are excluded</p> <p>3 from hearing the testimony in the</p> <p>4 case, so you won't be able to sit here</p> <p>5 and participate -- and listen. Also,</p> <p>6 I want to instruct you, if you're a</p> <p>7 witness -- hang on one second. I also</p> <p>8 want to instruct you, once someone has</p> <p>9 testified, don't discuss that</p> <p>10 testimony with others who may testify.</p> <p>11 Keep that to yourself. That sort of</p> <p>12 defeats the purpose of the rule if you</p> <p>13 go out of here and then tell everybody</p> <p>14 what you said or what you were</p> <p>15 cross-examined about. So that's</p> <p>16 generally the rule.</p> <p>17 Lawyers -- okay, now you may be</p> <p>18 excused. Thank you. Lawyers, help me</p> <p>19 with this, I don't know who your</p> <p>20 witnesses are. You look around the</p> <p>21 room. If somebody comes in, you know,</p> <p>22 keep your eye out, make sure you know</p> <p>23 who your witnesses are. You know, if</p>	<p>1 HEARING OFFICER: What was your</p> <p>2 first name?</p> <p>3 MR. WELLS: Daniel.</p> <p>4 HEARING OFFICER: Thank you, sir.</p> <p>5 Anything else? Mr. Ludder? Call your</p> <p>6 first witness.</p> <p>7 MR. LUDDER: All right.</p> <p>8 Before -- before I do, let me ask if</p> <p>9 the attorneys want to kind of explain</p> <p>10 to the Judge about the exhibits.</p> <p>11 MR. CARTER: Okay. We can. Your</p> <p>12 Honor, what we have -- well, we</p> <p>13 basically propose to try and cut down</p> <p>14 on some of the confusion with the</p> <p>15 exhibits. We have in the books over</p> <p>16 here on the witness -- by the witness</p> <p>17 chair, joint exhibits. I think</p> <p>18 the -- they're tabbed as Joint</p> <p>19 Exhibits 1 through 14, but we've</p> <p>20 removed a couple of exhibits in the</p> <p>21 past week or so, so those -- that</p> <p>22 isn't a consecutive 1 through 12, but</p> <p>23 those are the joint exhibits. And</p>

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<p>1 those exhibits were basically -- the</p> <p>2 parties got together. Those have been</p> <p>3 basically pulled off our eFile system</p> <p>4 or -- or negotiated through</p> <p>5 communications with the -- with the</p> <p>6 parties. And I guess -- are we going</p> <p>7 to stipulate? We'll stipulate to the</p> <p>8 authenticity of the exhibits in the</p> <p>9 joint exhibit books. I think</p> <p>10 we're -- however, we won't stipulate</p> <p>11 to -- David, I think you said it</p> <p>12 better a while ago -- but to the -- to</p> <p>13 what they're being offered for, I</p> <p>14 guess.</p> <p>15 MR. LUDDER: Right.</p> <p>16 MR. CARTER: Is that close?</p> <p>17 MR. LUDDER: Right.</p> <p>18 MR. CARTER: There may be some</p> <p>19 differences as to what the Department</p> <p>20 would offer a document for and what</p> <p>21 Mr. Ludder may offer the document for,</p> <p>22 so --</p> <p>23 HEARING OFFICER: Are you agreeing</p>	<p>1 that works. Sometimes we get</p> <p>2 originals or whatever mixed up. Just</p> <p>3 make sure he gets them in the end,</p> <p>4 okay?</p> <p>5 MR. CARTER: That's fine. Thank</p> <p>6 you.</p> <p>7 HEARING OFFICER: Anything else?</p> <p>8 MR. LUDDER: No. Petitioners call</p> <p>9 Bobby Lewis.</p> <p>10 HEARING OFFICER: Mr. Lewis, I</p> <p>11 think we'll put the witnesses right</p> <p>12 here. You're the first one, and our</p> <p>13 court reporter will swear you in.</p> <p>14 (The Witness was duly sworn.)</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MR. LUDDER:</p> <p>17 Q. Would you please state your name?</p> <p>18 A. I'm Bobby Lewis.</p> <p>19 Q. Make sure that I can hear you too.</p> <p>20 A. Okay.</p> <p>21 Q. And where do you live presently?</p> <p>22 A. My physical address is 3019 Webb</p> <p>23 Road, Dothan, Alabama, 36303.</p>
Page 14	Page 16
<p>1 that they're admissible, though?</p> <p>2 MR. WHITE: Yes, sir.</p> <p>3 MR. CARTER: Yes, sir.</p> <p>4 MR. LUDDER: Well, we are agreeing</p> <p>5 that they are authentic. They may not</p> <p>6 be admissible if they're not relevant.</p> <p>7 HEARING OFFICER: Okay. Okay.</p> <p>8 That's fine. You haven't -- all</p> <p>9 right. That's fine -- that's good.</p> <p>10 You'll just have to offer them each</p> <p>11 time.</p> <p>12 MR. CARTER: Yes, sir.</p> <p>13 HEARING OFFICER: Anything else on</p> <p>14 that subject? Do this for me, please.</p> <p>15 Make sure the court reporter ends up</p> <p>16 with all the original exhibits that</p> <p>17 are admitted into evidence, so that at</p> <p>18 the end of this hearing, we're not</p> <p>19 flopping around like we usually are</p> <p>20 looking for exhibits. Make sure he</p> <p>21 has them. I won't take them out of</p> <p>22 here. He'll take them out of here at</p> <p>23 the end of the hearings. You know how</p>	<p>1 Q. And how long have you lived at</p> <p>2 that location?</p> <p>3 A. Outside of about two years, my</p> <p>4 entire adult life -- or entire life, which</p> <p>5 is -- I'm soon to be 62.</p> <p>6 Q. And do you own your own home?</p> <p>7 A. I do.</p> <p>8 Q. And you own the real estate it's</p> <p>9 on?</p> <p>10 A. Yes.</p> <p>11 Q. How much real estate do you own in</p> <p>12 that -- in and around your home?</p> <p>13 A. Approximately 65-plus acres.</p> <p>14 Q. Okay. And when did you purchase</p> <p>15 that property?</p> <p>16 A. Well, it was acquired at different</p> <p>17 times, but back in the '70s, my mother and daddy</p> <p>18 gave me an acre, and I bought an additional</p> <p>19 acre. I don't recall the exact date of that</p> <p>20 purchase. And after -- before my dad</p> <p>21 left -- died, passed away, we started -- they</p> <p>22 were very independent people, and rather than</p> <p>23 allowing the children to help them, they</p>

Page 17	Page 19
<p>1 would -- Can you pay our bills -- I'm going to 2 give you some land. And so throughout, there's 3 multiple deeds on the tract of land -- different 4 tracts of land I own. 5 Q. Okay. And are you aware that ADEM 6 issued a permit modification for an expansion of 7 the Dothan landfill in January, 2016? 8 A. Yes, sir. 9 Q. And do you know where that 10 landfill expansion will be located? 11 A. Approximately seven- or 12 eight-tenths of a mile in front of my house. 13 Q. And is that -- in what direction 14 from your house? 15 A. Directly -- from my front door to 16 the southwest corner of the proposed expansion, 17 the south/southwest. 18 Q. And do you know how large the 19 landfill expansion is supposed to be? 20 A. The proposed expansion is 21 approximately 20 acres on one of the cells. 22 Q. Okay. Let's look at the joint 23 exhibit book, if we can find it, or Exhibit</p>	<p>1 been marked as Joint Exhibit Number 3, Part 2 Roman III, and ask you if you have seen that 3 diagram before. 4 A. Yes, sir, I have. 5 Q. When you saw it, did you see it in 6 black and white, or color? 7 A. I saw it in both ways. 8 Q. You did? 9 MR. LUDDER: Your Honor, I'd ask 10 permission to substitute a color copy 11 after the hearing is over. 12 HEARING OFFICER: Okay. 13 BY MR. LUDDER: 14 Q. What does that diagram show? 15 A. It shows -- this is Webb Road 16 coming off of Ross Clark Circle, Highway 210. 17 Q. When you say, "this," you have to 18 describe where you are on the map. 19 A. Okay. Beginning at the left-hand 20 corner of this page -- left-hand center 21 [verbatim] corner -- there is a road right of 22 way that is Old Webb Road, and this intersection 23 road right here is Burkett Road, and --</p>
Page 18	Page 20
<p>1 Number 3. It should be -- yeah. See if you can 2 find -- well, I'll try to find it for you. 3 MR. DAVIS: See where it starts? 4 MR. LUDDER: Are the drawings up 5 here? Are the drawings in this book? 6 MR. CARTER: Yes. The drawings are 7 actually -- let's see -- Number VI, on 8 Exhibit 3, Part Number VI. 9 MR. LUDDER: Okay. 10 MR. CARTER: Excuse me, III. 11 Excuse me. I got the wrong tab. 12 MR. LUDDER: Okay. 13 MR. CARTER: You want to move 14 another table? 15 MR. LUDDER: Probably a good idea. 16 MR. CARTER: It will be easier to 17 handle. 18 MR. LUDDER: Yeah. 19 MR. SASSER: Will that work for 20 you? 21 MR. LUDDER: Yeah, thank you. 22 BY MR. LUDDER: 23 Q. All right. Let me show you what's</p>	<p>1 Q. "Right here," you're pointing to 2 where? 3 A. I'm -- I'm pointing in the center 4 section of the proposed page -- or the shown 5 page. And in looking at this, the existing 6 landfill, municipal solid waste disposal site 7 there in Dothan, is in the left center portion 8 of the page. 9 Q. And is that the larger rectangle 10 that's horizontal in direction? 11 A. Yes, sir. 12 Q. Okay. And where is the proposed 13 landfill? 14 A. It's lying to the south and 15 southeast of that area. 16 Q. Okay. So it -- does it border the 17 existing landfill? 18 A. Yes, sir. 19 Q. And where is your house on that 20 diagram, if it -- if it is shown? 21 A. My home is located -- if you 22 traverse from the intersection of Burkett Road 23 and Old Webb Road, you traverse down Webb Road</p>

Page 21	Page 23
<p>1 approximately half a mile, and my home and 2 property is located on the north side of Old 3 Webb Road across from the closed municipal solid 4 waste disposal site, 35-01. 5 Q. Okay. Let me ask you to circle 6 your house, if you can find it, and then put 7 your initials next to it. 8 A. It's an old drawing. 9 Q. Put your initials next to it. 10 A. I did, yes, sir. 11 Q. Okay. You did? Okay. Very good. 12 HEARING OFFICER: Mr. Ludder, when 13 you substitute that color copy, I'm 14 not going to have that. Do you want 15 to go ahead and let him -- 16 MR. LUDDER: I don't have that. 17 HEARING OFFICER: You don't have 18 that -- 19 MR. LUDDER: Well, it's clean 20 enough, and the marking -- the exhibit 21 marking's the only difference, but 22 other than that, it's clean. 23 HEARING OFFICER: I understand, but</p>	<p>1 use it? 2 MR. LUDDER: Now, do you have an 3 exhibit number that you want to offer 4 for those? Use for this, anyway? 5 MR. WHITE: We can use yours. I 6 mean, I'll just refer to yours. 7 MR. LUDDER: Okay. 8 HEARING OFFICER: Do you want to 9 put the whole set in? 10 MR. WHITE: I think that's a good 11 idea. 12 HEARING OFFICER: All right. Let's 13 mark it as -- 14 MR. LUDDER: Exhibit P-5? 15 HEARING OFFICER: Either joint 16 exhibit or not, I don't really care. 17 MR. WHITE: You want to look at it 18 and just confirm that there's nothing 19 in here you don't like? 20 MR. LUDDER: I'm sure -- I'm sure 21 that's fine. Let's just mark this as 22 Exhibit P-5. 23 HEARING OFFICER: P-5?</p>
Page 22	Page 24
<p>1 I'm not going to have his notations on 2 the one you substituted. 3 MR. LUDDER: What I'm saying is, 4 May I substitute this? 5 HEARING OFFICER: Yes. It's fine 6 with me. 7 MR. WHITE: No objection. 8 MR. CARTER: No objection. 9 MR. WHITE: We have a full drawing 10 here if -- 11 MR. LUDDER: We do. Yeah, I kind 12 of expected that to be part of the -- 13 MR. WHITE: I mean, if you'd like 14 to use it, that's fine. 15 MR. LUDDER: That would be better, 16 I think, to use a big drawing. We can 17 read what's on it. 18 MR. WHITE: Because they are bound. 19 It's a complete set. 20 MR. LUDDER: I'm sorry? 21 MR. WHITE: It's a complete set. 22 MR. LUDDER: Okay, okay. 23 MR. SASSER: Do you want to just</p>	<p>1 MR. LUDDER: P-5. There's a cover 2 page on the front? 3 MR. WHITE: Yes. 4 BY MR. LUDDER: 5 Q. All right. Mr. Lewis, I'm showing 6 you right now Exhibit P-5, which is a set of 7 drawings, which includes Joint Exhibit Number 3, 8 Part IV [verbatim], including the diagram that 9 you've just been looking at, and that you 10 described as a -- or -- it's a diagram of the 11 layout of the facility, correct? 12 A. Yes, sir. 13 Q. Okay. Now, I'm showing you 14 Exhibit P-5, and that's the same diagram, is it 15 not? 16 A. It appears to be, yes, sir. 17 Q. Larger and in color? 18 A. Yes, sir. 19 Q. Okay. Would you now circle your 20 house and put your initials next to it? And 21 let's, again, ask: The area where the existing 22 landfill is, is that the one in -- colored in 23 pink?</p>

<p style="text-align: right;">Page 25</p> <p>1 A. Yes, sir.</p> <p>2 Q. And the area where the proposed</p> <p>3 landfill expansion, is that the one colored in</p> <p>4 green?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay.</p> <p>7 HEARING OFFICER: Mr. Lewis, show</p> <p>8 me where your house is again. Okay.</p> <p>9 Thank you.</p> <p>10 BY MR. LUDDER:</p> <p>11 Q. Mr. Lewis, is it your</p> <p>12 understanding that the landfill that's shown in</p> <p>13 pink is in operation right now? That's the</p> <p>14 existing landfill?</p> <p>15 A. Well, based on media reports and</p> <p>16 personal observations, and the media says -- or</p> <p>17 Dothan -- has started transferring their garbage</p> <p>18 to a third-party vendor. I don't recall. Maybe</p> <p>19 it's Waste Management. But as -- as far as I</p> <p>20 understand, it's in the process of being closed.</p> <p>21 Q. Is it your understanding that</p> <p>22 waste is being disposed of at that site now?</p> <p>23 A. They're still being</p>	<p style="text-align: right;">Page 27</p> <p>1 times, it can be bad. It can be like a little</p> <p>2 mini dust storm. I've been out west and saw</p> <p>3 those, been involved in some of those. You have</p> <p>4 flies. You have rodents. Your buzzards, your</p> <p>5 crows, seagulls, your vermin, you know, as far</p> <p>6 as a lot of coons and possums and other wild</p> <p>7 animals.</p> <p>8 Q. All right. Do you -- let's</p> <p>9 discuss the birds that you've identified. How</p> <p>10 often have you seen birds at your -- at and</p> <p>11 around your house?</p> <p>12 A. As a daily occurrence. It was</p> <p>13 from -- I don't recall seeing them as bad when</p> <p>14 the landfill was directly across the road from</p> <p>15 my home. I don't know why that case was, but</p> <p>16 when they moved to this location and started</p> <p>17 using it, we started having more and more</p> <p>18 buzzards. And the seagulls, I had never seen</p> <p>19 them in our area before. Coyotes was another</p> <p>20 thing that I don't recall ever having there on</p> <p>21 the home place. And I refer to the "home</p> <p>22 place." My mother and daddy bought the farm in</p> <p>23 1955.</p>
<p style="text-align: right;">Page 26</p> <p>1 used -- there's still some waste being put on</p> <p>2 the site, yes, sir.</p> <p>3 Q. Okay. But you believe it to be in</p> <p>4 the process of closure?</p> <p>5 A. Well, that's what my understanding</p> <p>6 is, again.</p> <p>7 Q. Okay. Do you know when that</p> <p>8 landfill was in operation? What year to year?</p> <p>9 A. If I remember correctly, it was</p> <p>10 either '90 -- sometime in late '92 or early '93</p> <p>11 it first started being put into use.</p> <p>12 Q. And do you know when it -- when it</p> <p>13 substantially ceased to be used?</p> <p>14 A. If I remember correctly, I think</p> <p>15 it was either in October or November that the</p> <p>16 City had contracted to start trucking their</p> <p>17 waste to other areas -- another location.</p> <p>18 Q. Okay. Does the landfill have any</p> <p>19 kind of impact in the area where you're -- you</p> <p>20 live?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And what impact would that be?</p> <p>23 A. You have dust, you have the -- at</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. All right. And would you describe</p> <p>2 how many birds you have seen at your house?</p> <p>3 A. From a few to hundreds, if not</p> <p>4 maybe thousands.</p> <p>5 Q. At one time?</p> <p>6 A. At one time.</p> <p>7 Q. And since the existing landfill</p> <p>8 has reduced the amount of waste that it has</p> <p>9 accepted, have you seen any change in the number</p> <p>10 of birds at your house?</p> <p>11 A. A drastic change. Yes, sir.</p> <p>12 Q. And in which -- which direction?</p> <p>13 A. Down. We went from seeing, you</p> <p>14 know, hundreds to seeing just a few. You know,</p> <p>15 from -- you'd see a dead possum or some</p> <p>16 other -- you know, maybe somebody's pet had</p> <p>17 gotten run over, there'd be, you know, two or</p> <p>18 three or four buzzards, which is kind of typical</p> <p>19 in the southeast -- from the hundreds, if not</p> <p>20 thousands. It was nothing to see -- when the</p> <p>21 landfill was in full operation -- to see a dead</p> <p>22 animal in the road, and there'd may be 100</p> <p>23 buzzards there in or around on the road right of</p>

<p style="text-align: right;">Page 29</p> <p>1 way.</p> <p>2 Q. All right. I believe you</p> <p>3 mentioned odors. What kind of odors did you</p> <p>4 experience at your house?</p> <p>5 A. I'd describe it as very putrid, a</p> <p>6 very vile odor. Growing up, we had a lot of</p> <p>7 hogs, and hog pens did not -- to me, did not</p> <p>8 smell as bad as the landfill at times.</p> <p>9 Q. And since the existing landfill</p> <p>10 has been -- has reduced the amount of waste that</p> <p>11 has been disposed of there, has there been a</p> <p>12 change?</p> <p>13 THE WITNESS: This is some of our</p> <p>14 witnesses, Your Honor.</p> <p>15 HEARING OFFICER: Is that your</p> <p>16 witness?</p> <p>17 MR. LUDDER: Yes, it is.</p> <p>18 HEARING OFFICER: You'll have to</p> <p>19 tell him.</p> <p>20 MR. LUDDER: All right.</p> <p>21 HEARING OFFICER: Thank you,</p> <p>22 Mr. Lewis.</p> <p>23 THE WITNESS: I listened to your</p>	<p style="text-align: right;">Page 31</p> <p>1 it when it warms back up. And I would attribute</p> <p>2 that to the expansion and contraction of the</p> <p>3 surface of the earth.</p> <p>4 Q. All right. Now, you mentioned</p> <p>5 dust at your property. Was that during the time</p> <p>6 that the existing landfill was in operation?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And what's the status now?</p> <p>9 A. It's greatly reduced.</p> <p>10 Q. Okay. And you mentioned flies in</p> <p>11 and around your house?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Has that been a problem inside</p> <p>14 your house?</p> <p>15 A. If you kept -- we kept the house</p> <p>16 shut up and sealed up, or I did. I'm a single</p> <p>17 man, and my daughter's -- lives in Montgomery</p> <p>18 now, but it was a problem.</p> <p>19 Q. I'm sorry?</p> <p>20 A. It was definitely a problem, the</p> <p>21 flies was, in -- in the past.</p> <p>22 Q. And "in the past," was that while</p> <p>23 the existing landfill was in operation?</p>
<p style="text-align: right;">Page 30</p> <p>1 instructions. And what was your name,</p> <p>2 sir?</p> <p>3 HEARING OFFICER: Jim Hampton.</p> <p>4 BY MR. LUDDER:</p> <p>5 Q. Mr. Lewis, the odors that you</p> <p>6 described, you experienced those during the time</p> <p>7 that the existing landfill was in operation,</p> <p>8 correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And could you describe whether</p> <p>11 those odors have changed since that landfill has</p> <p>12 been -- has reduced its -- the waste that's</p> <p>13 disposed of there?</p> <p>14 A. Significantly, yes, sir. It's</p> <p>15 been greatly reduced.</p> <p>16 Q. Do you have any problem at all</p> <p>17 with the odors now?</p> <p>18 A. Periodically, there's</p> <p>19 still -- when there's a barometric pressure,</p> <p>20 we're getting a real cold front or something,</p> <p>21 coming through during the winter when it's</p> <p>22 cold -- we had some pretty cool weather a few</p> <p>23 nights there -- and a lot of odor comes off of</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Yes, sir.</p> <p>2 Q. And how is it now?</p> <p>3 A. Very few.</p> <p>4 Q. Okay. You mentioned the dust that</p> <p>5 you've experienced. Could you actually -- in</p> <p>6 the past -- could you actually see clouds of</p> <p>7 dust?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Coming from the landfill</p> <p>10 direction?</p> <p>11 A. I liken it to being in Utah in</p> <p>12 call -- well, what they call those western dust</p> <p>13 storms. I was on a hunting trip, and it was not</p> <p>14 as bad, but it was so significant you could see</p> <p>15 a cloud of dust coming through.</p> <p>16 Q. And from what direction?</p> <p>17 A. It was coming from the -- from my</p> <p>18 house to -- that dust problem was to the</p> <p>19 south/southwest.</p> <p>20 Q. In the direction of the landfill?</p> <p>21 A. Yes, sir. And the dust was</p> <p>22 flowing to the north/northeast.</p> <p>23 Q. Okay. And since that landfill has</p>

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<p>1 substantially reduced its waste disposal, what's 2 the situation now with dust? 3 A. There's very little now. 4 Q. You mentioned coyotes. Could you 5 describe what kind of issue you've had with 6 coyotes? 7 A. In times past, it was not unusual 8 two or three times a week -- this is when the 9 operation was -- still in full operation of the 10 landfill -- to have coyotes, packs of coyotes, 11 come through the field behind my house, right up 12 by my house two or three times a week. And, you 13 know, as far as how many, it was at night so you 14 couldn't tell, but it sounded like there was 15 dozens of them. 16 Q. And since the landfill has reduced 17 its waste disposal, have you -- has that 18 changed? 19 A. It had. In fact, two, three 20 nights ago, I was laying in bed and trying to 21 remember when was the last time I had a pack of 22 coyotes come through the field behind my house. 23 And I couldn't recall. It had been months.</p>	<p>1 jump. It's like hearing a gunshot next to you. 2 Most people are going to jump or flinch. 3 Q. Uh-huh. And let me return to 4 odors. 5 During the existing landfill's operation, 6 did the odors require you to change your 7 behavior at all? 8 A. Yes, sir. 9 Q. Describe that. 10 A. In times -- in years past, I 11 was -- I'm an avid outdoorsman. I hunt a lot. 12 I always had a big -- used to have big parties 13 and invite friends and family and customers, 14 generally in March or April. I no longer do 15 that because of the odors off those landfills. 16 We limit our activities there and inside the 17 house. I entertain few, if anyone -- anybody at 18 the home. In years past, we used to have the 19 church group, the men's ministry leaders from 20 some of the previous churches I've attended, and 21 it was nothing to have a large contingent of 22 those people at my home. I no longer do that. 23 Q. And in cooler weather, would you</p>
Page 34	Page 36
<p>1 Q. Okay. Have you had any issue with 2 noise from the landfill area? 3 A. In the times past, yes, sir. When 4 that landfill was in operation, you could hear 5 the heavy machinery, the backup alarms, at 6 times, the tailgate -- dump trucks, or the 7 trucks with tailgates, dumping and clanging of 8 those tailgates. 9 Q. And when you say "the landfill," 10 you're talking about the existing landfill 11 that's shown in pink there on the diagram? 12 A. Yes, sir. 13 Q. And what's the situation today 14 with noise? 15 A. Coming from that landfill, it's 16 minimal. 17 Q. All right. What kind of an impact 18 did the noise have on you previously when the 19 landfill was in operation? 20 A. It was hard to be out in your yard 21 and be carrying on a conversation with someone 22 and hear this clang, and you jump, and it 23 doesn't matter how many times it happens, you'll</p>	<p>1 open your windows? 2 A. Absolutely not. 3 Q. Why is that? 4 A. The odor, the flies, the dust. 5 Q. Mr. Lewis, in your current house, 6 how long have you lived there? 7 A. Since '92. 8 Q. All right. And how much -- is 9 your house on a lot? 10 A. It's actually on a one-acre parcel 11 of land. The mortgage says a one-acre parcel of 12 land with approximately 65 acres remaining that 13 I own from the old home place. 14 Q. Okay. And have you had an 15 opportunity since you've lived there to form an 16 opinion as to the value of your house and your 17 one-acre parcel? 18 MR. WHITE: Objection. He's not 19 qualified, unless he's established a 20 predicate. 21 HEARING OFFICER: Overruled. 22 THE WITNESS: If I may interject 23 there, I'm also in the -- I'm in the</p>

<p style="text-align: right;">Page 37</p> <p>1 real estate business, Your Honor. 2 HEARING OFFICER: I -- just answer 3 the question. 4 A. As far as substantial 5 value -- current value, my home and one acre of 6 land is probably valued at around 100- to 7 120,000, maybe. 8 Q. And if you add to that the other 9 property that you own, how much -- what would 10 you -- do you have an opinion as to the value of 11 all your property? 12 A. Probably -- 13 MR. WHITE: Same objection. 14 HEARING OFFICER: Overruled. 15 MR. WHITE: I'm sorry. 16 HEARING OFFICER: Go ahead. 17 A. In my estimation of value, because 18 of the landfill, it's probably 250,000 maybe. 19 Q. Okay. And is there anything 20 about -- are there any conditions on your 21 property that you feel detract from the value? 22 A. On my personal property? 23 Q. Yes.</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Okay. Now, in this case, the 2 Environmental Management Commission will decide 3 whether the permit needs to be modified. If the 4 Commission decides to modify the permit -- I 5 withdraw the question. 6 Was one of the claims that you made to 7 initiate this proceeding regarding wetlands on 8 the -- on the site where the new landfill is 9 going to be located? 10 A. Yes, sir. 11 Q. And what was -- can you summarize 12 the claim? 13 A. Well, I've lived out there since I 14 was -- my mom and dad bought it when I was one. 15 And as a boy, young adult, adult, I've played in 16 the creeks, hunted and fished along the banks of 17 those streams. The fishing we used to do in 18 that particular area is no longer available. 19 Obviously, we don't have access to do that 20 because of the ownership, but the fish no longer 21 survive in that environment. 22 Q. And are you familiar with the 23 claim that was made on your behalf regarding</p>
<p style="text-align: right;">Page 38</p> <p>1 A. No, sir. 2 Q. The conditions that you described 3 as resulting from the landfill operation: 4 Birds, odors, noise, dust, flies, coyotes, do 5 those conditions enhance or detract from the 6 value of your property? 7 A. In my opinion, they detract. 8 Q. Do you think you would be able to 9 sell your property at the value that you think 10 it's worth? 11 A. I think it would be hard. Again, 12 there's a stigmatization -- and this is based 13 off of my real estate experience -- that -- 14 there's a stigmatization that goes to property 15 adjacent to or adjoining landfills. 16 Q. Do you have an understanding of 17 how long the Dothan landfill expansion will 18 operate? 19 A. In reading this 800-and- 20 something-page -- really going through it, 21 reading much of it, the permitting documents, it 22 appears to me that somewhere in the 15 to 20 23 years is their estimated usage, time of usage.</p>	<p style="text-align: right;">Page 40</p> <p>1 wetlands? 2 A. Yes, sir. 3 Q. Could you describe what that claim 4 was? 5 A. I don't recall the exact acreage, 6 but there's a certain amount of acreage that is 7 proposed, and from reading all the documents 8 that I've read, they've converted -- or have 9 converted and intend to convert acreage of 10 wetlands and streambeds to a landfill. 11 Q. All right. Now, if the Commission 12 decides that the permit should be revised to 13 prohibit what you call a conversion of wetlands 14 and streams to a landfill, how would that 15 revision benefit you? 16 A. Well, it'd reduce the 17 area -- proposed area of the landfill expansion. 18 And when they reduce the area, they reduce the 19 overall tonnage that could be accepted and 20 thereby reducing the life expectancy. So it 21 would be a shorter time usage, or shorter period 22 to use the property. And it'd reduce the amount 23 of time that myself and my neighbors would have</p>

<p style="text-align: right;">Page 41</p> <p>1 to deal with this issue.</p> <p>2 Q. And "this issue" being what?</p> <p>3 A. The expansion of the landfill and</p> <p>4 the odors -- all the -- all the negative parts</p> <p>5 of living there close to it.</p> <p>6 Q. All right. Now, are you familiar</p> <p>7 with the claim made on your behalf regarding</p> <p>8 cover materials to be used at the landfill?</p> <p>9 A. Yes, sir, I -- I am. I've read in</p> <p>10 the permitting process that they talk about an</p> <p>11 alternative cover, and I questioned that.</p> <p>12 Q. Okay. If the Commission</p> <p>13 determines that the permit should be revised to</p> <p>14 prohibit an alternative cover, how would that</p> <p>15 benefit you?</p> <p>16 A. Well, again, I'm reading from the</p> <p>17 permitting process that was made available via</p> <p>18 the portal, the e-Portal, on ADEM's website. It</p> <p>19 appears that they're talking about using some</p> <p>20 type of polystyrene or polyethylene. I don't</p> <p>21 really know what an "alternative cover" is, but</p> <p>22 covering with -- I personally think it needs to</p> <p>23 be 12 inches of topsoil or more, or 12 inches of</p>	<p style="text-align: right;">Page 43</p> <p>1 and the City of Dothan, is they -- if approved,</p> <p>2 will authorize two working faces. And it does</p> <p>3 not designate, is it two working faces of the</p> <p>4 municipal solid waste? It doesn't designate, is</p> <p>5 it a C&D, or a solid waste, or two C&Ds? It</p> <p>6 doesn't designate. So it says "two working</p> <p>7 faces."</p> <p>8 Q. And do you know what a working</p> <p>9 face is?</p> <p>10 A. It's an area where they're</p> <p>11 actually putting debris or garbage in.</p> <p>12 Q. Okay. And if the Commission</p> <p>13 decides to revise the permit, is there -- is</p> <p>14 there some way that that would benefit you</p> <p>15 regarding the working faces?</p> <p>16 A. I think the working faces need to</p> <p>17 be no more than one, if there was going to be a</p> <p>18 revision.</p> <p>19 Q. I'm sorry. Say that --</p> <p>20 A. I believe there should be no more</p> <p>21 than one working face, if, in fact, there has to</p> <p>22 be a face.</p> <p>23 Q. All right. Are you familiar with</p>
<p style="text-align: right;">Page 42</p> <p>1 earth, rather than some six inches. But you</p> <p>2 need to cover it better, because if it's covered</p> <p>3 better, it reduces the vermin. It reduces the</p> <p>4 food source for the buzzards, the crows, the</p> <p>5 seagulls, the coyotes, the foxes, the coons,</p> <p>6 possums, and all the things that come along with</p> <p>7 that.</p> <p>8 Q. Does it have any affect on odor?</p> <p>9 A. It would have bound to have an</p> <p>10 effect on odor. It would -- it'd have to close</p> <p>11 it down some.</p> <p>12 Q. Close what down?</p> <p>13 A. I'm talking about it'd have to</p> <p>14 reduce the volume of odor emitting from the</p> <p>15 landfill if there was an earth cover versus an</p> <p>16 alternative cover.</p> <p>17 Q. All right. Are you familiar of</p> <p>18 the -- with the claim we've made on your behalf</p> <p>19 concerning authorized working faces?</p> <p>20 A. I am, yes, sir.</p> <p>21 Q. Could you summarize that?</p> <p>22 A. In reading the permitting process,</p> <p>23 it appears in their request and ADEM's paperwork</p>	<p style="text-align: right;">Page 44</p> <p>1 the claim made on your behalf regarding the</p> <p>2 final cover slope?</p> <p>3 A. I do.</p> <p>4 Q. Could you summarize that?</p> <p>5 A. Well, looking in the paperwork</p> <p>6 that we reviewed, it said a four-to-one slope.</p> <p>7 A four-to-one slope is four out, one up. That's</p> <p>8 a sum -- that's a short of that. For every four</p> <p>9 foot of base, you've got one foot of vertical</p> <p>10 height allowed. If it's a four-to-one slope, it</p> <p>11 reduces the degree of angle on the slope,</p> <p>12 thereby reducing the possibility of erosions</p> <p>13 and/or washouts which would expose raw garbage</p> <p>14 that theoretically had been covered but then,</p> <p>15 because of rainwater or -- or other means, would</p> <p>16 be washed out and exposed to -- to bringing</p> <p>17 vermin back to you.</p> <p>18 Q. And do you know what was</p> <p>19 authorized in the permit for slope -- final</p> <p>20 slope?</p> <p>21 A. It appeared to me there was a</p> <p>22 three to one, somewhere in the paperwork, was</p> <p>23 mentioned.</p>

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<p>1 Q. All right. Now, if the Commission 2 revised that from three to one to four to one, 3 how would that benefit you? 4 A. It would reduce the volume of 5 potential use, shorten the number of years, 6 because the volume would be reduced because of 7 the vertical height would not be allowed to be 8 as great. 9 Q. Would it have any effect on 10 erosion? 11 A. It would bound to slow down or 12 mitigate the potential of erosion. 13 Q. And how would that benefit you, if 14 at all? 15 A. It would not wash off in the 16 streams, the creeks, there in my area of the 17 community. 18 Q. Would it -- would erosion -- or 19 could erosion expose waste? 20 A. Yes. 21 Q. And what effect might that have on 22 you? 23 A. Well, if erosion did take place,</p>	<p>1 has published notice of draft permit (attached). 2 Q. And what's the date on that 3 e-mail? 4 A. It's the 4th day of October. 5 Q. And would you look at the 6 attachment, please, and do you recognize that? 7 A. I do, yes, sir. 8 HEARING OFFICER: October 4th, 9 2015? 10 THE WITNESS: Yes, sir. 11 HEARING OFFICER: Thank you. 12 BY MR. LUDDER: 13 Q. What is the attachment? 14 A. The attachment is the Public 15 Notice, Number 422, regarding the proposed 16 modification of the municipal solid waste 17 landfill. 18 Q. All right. Now, is the attachment 19 to the document you're holding, is that the same 20 attachment that went with the e-mail? 21 A. Yes, sir. 22 Q. Okay. Now, there are some blue 23 texts, words, in that document. Do you see</p>
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<p>1 and there was garbage exposed, the vermin vector 2 would be back and forth. 3 Q. Any effect on odors? 4 A. It would bound to open the odors 5 back up again, as well, and the fly potential, 6 and pretty much all the negative parts of the 7 continued operation of the landfill. 8 Q. All right. Did you, at any time, 9 receive notice of ADEM's proposed modification 10 of the landfill permit? 11 A. I did. 12 Q. Let me show you what's been marked 13 as Exhibit P-3 and ask you if you can identify 14 that document. 15 A. Yes, sir. Mr. Ludder, that is an 16 e-mail correspondence between yourself that you 17 sent to me on the 4th day of October at about 20 18 minutes until eight o'clock. 19 Q. And would you read the text in 20 that correspondence, in that e-mail? 21 A. It was sent to myself and 22 it's -- Earl, and I think you're referring to 23 Earl Jones there. It says, Earl and Bobby, ADEM</p>	<p>1 that? 2 A. Yes, sir. Here it is. It's 3 hyperlinks to the -- web hyperlinks. 4 Q. Okay. Now, the -- the first 5 hyperlinked words are what? 6 A. Landfill proposed permits. 7 Q. And did you make an attempt to 8 open that hyperlink? 9 A. I did. 10 Q. And what did you find? 11 A. It took a good while to open this. 12 It's a large file. It's the one that I 13 printed -- had printed 800 and so many pages and 14 opened it up. Yes, sir. 15 Q. Okay. And do you recall what was 16 in it? 17 A. It had some engineering reports, 18 it had some stuff from Tuscaloosa Testing 19 Laboratory, from CDG Engineers, if I believe 20 correctly. It had the application. It had the 21 area -- the slope, the -- the grade of slope on 22 it. It had a lot of issues. Like I said, I 23 printed it and brought it, just in case.</p>

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<p>1 MR. LUDDER: Your Honor, at this 2 time, I think the parties have agreed 3 on a stipulation, and I can try to 4 phrase it for everybody, that the 5 document that was hyperlinked to that 6 notice is the same as Joint Exhibit 7 Number 3 except for the hyperlinked 8 document did not include fee documents 9 from the Department and did not 10 include -- I believe it's Joint 11 Exhibit Number 3, Part VI. 12 MR. CARTER: That's correct. 13 MR. LUDDER: That's the extent of 14 the stipulation I'm offering. 15 MR. CARTER: We agree. 16 MR. WHITE: No objection. 17 HEARING OFFICER: Now, you're 18 offering that exhibit? 19 MR. LUDDER: Well, no, I'm sorry. 20 I haven't offered that one yet, I'm 21 just -- the stipulation that I'm 22 offering is that -- 23 HEARING OFFICER: The differences</p>	<p>1 let's find Joint Exhibit Number 3, 2 Part VI. 3 BY MR. LUDDER: 4 Q. Now, have you seen those documents 5 before? 6 A. I had not until one day in the 7 last few days, or one day last week. 8 Q. Okay. 9 A. You -- you e-mailed those to me 10 and asked that question. 11 Q. All right. Now, we've 12 already -- did you rely on the document that was 13 hyperlinked in Exhibit P-3 to -- to prepare your 14 public comments on the proposed permit? 15 A. I did, yes, sir. 16 Q. Did you rely on the document 17 that's in Exhibit P-3 -- that's hyperlinked in 18 Exhibit P-3 -- in preparing for the appeal of 19 this -- of the Department's permit? 20 A. I did. 21 Q. And the documents in Joint Exhibit 22 Number 3, Part VI, were not included in that 23 document, correct?</p>
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<p>1 between the two? 2 MR. LUDDER: The differences 3 between the linked document in Exhibit 4 P-3 and Joint Exhibit Number 3. 5 HEARING OFFICER: All right. 6 MR. CARTER: David, is the document 7 you have, are you going -- are you 8 offering that as P-4 [verbatim]? 9 MR. LUDDER: I will. I'll just go 10 ahead and do that now and offer 11 Exhibit P -- P-3, it is. I'm sorry. 12 This is P-3. 13 MR. CARTER: That's the 14 e-mail? The e-mail and the -- 15 MR. LUDDER: That's the e-mail and 16 the attached public notice. 17 HEARING OFFICER: All right. Any 18 objections? 19 MR. CARTER: No objection. 20 HEARING OFFICER: It's admitted. 21 (Exhibit No. P-3 was admitted 22 into evidence.) 23 MR. LUDDER: Now, if we could,</p>	<p>1 A. That's correct. 2 MR. LUDDER: That's all the 3 questions I have, Your Honor. 4 HEARING OFFICER: Cross? By the 5 Department, I guess? 6 CROSS-EXAMINATION 7 BY MR. CARTER: 8 Q. Mr. Lewis, just -- like I said, 9 I'm Todd Carter. I represent the Department, 10 okay? Just to make sure I'm understanding what 11 you have testified to, I think you said you own 12 a total of 65 acres? 13 A. Approximately 65 acres. 14 Q. Okay. And now on Exhibit 15 P -- P-5, you marked where your home was; is 16 that correct? 17 A. Yes, sir. 18 Q. I guess where -- what I'm asking 19 is where is the rest of the 65 acres? I think 20 you said that was a one-acre parcel that you 21 live on? 22 A. I have a question...how old -- how 23 many years ago was this area --</p>

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<p>1 Q. I -- I -- I couldn't tell you,</p> <p>2 sir.</p> <p>3 A. And the reason I ask --</p> <p>4 Q. I don't know.</p> <p>5 HEARING OFFICER: Just let him ask</p> <p>6 the questions.</p> <p>7 THE WITNESS: Okay. I'm sorry.</p> <p>8 BY MR. CARTER:</p> <p>9 Q. But you said you live on a</p> <p>10 one-acre parcel here?</p> <p>11 A. Right. I -- it lies -- from where</p> <p>12 I lie -- from where my home is circled, it lies</p> <p>13 to the east, to the west, to the north, and to</p> <p>14 the northwest.</p> <p>15 Q. Okay. So --</p> <p>16 A. And to the --</p> <p>17 Q. Really kind of --</p> <p>18 A. Northeast. Basically to the north</p> <p>19 side of Old Webb Road.</p> <p>20 Q. Okay.</p> <p>21 A. And north -- north --</p> <p>22 Q. So is it the forested area?</p> <p>23 A. It's not forested. That's why I</p>	<p>1 Q. Okay. Has any of it been plowed</p> <p>2 up, or is it used for agricultural purposes?</p> <p>3 A. It has.</p> <p>4 Q. Okay. I noticed it looks like</p> <p>5 there's several areas around there that appear</p> <p>6 to be used for agricultural purposes. Is</p> <p>7 that -- what else do you do there on your</p> <p>8 property?</p> <p>9 A. The farm is rented out to somebody</p> <p>10 to farm.</p> <p>11 Q. Okay. What do they farm? I mean,</p> <p>12 just --</p> <p>13 A. They had peanuts there last year.</p> <p>14 Q. Okay. And now going into, I</p> <p>15 guess, some of the impacts that you were</p> <p>16 testifying to, I mean, that, farming, causes a</p> <p>17 lot of dust, doesn't it?</p> <p>18 A. It can.</p> <p>19 Q. You don't have any problem with</p> <p>20 them farming peanuts on your property?</p> <p>21 A. I do not. I've actually planted</p> <p>22 peanuts this past week myself.</p> <p>23 Q. Okay. Now, you mentioned too you</p>
Page 54	Page 56
<p>1 say its timber's been cut six years.</p> <p>2 Q. Okay. All right.</p> <p>3 A. I think. Five and a half years.</p> <p>4 Q. Okay. Now, you said you -- now,</p> <p>5 you mentioned at one point in your testimony you</p> <p>6 said you invited customers. What -- what kind</p> <p>7 of business are you in?</p> <p>8 A. I'm in the auction and real estate</p> <p>9 business.</p> <p>10 Q. Okay. And do you do that out of</p> <p>11 your -- your home?</p> <p>12 A. No, sir. I have an office and</p> <p>13 location -- if you continue down Webb Road, and</p> <p>14 you cross into the Webb jurisdiction a mile and</p> <p>15 a half down the road, it becomes Old Webb Road.</p> <p>16 Q. Okay.</p> <p>17 A. E911 changed this. It used to all</p> <p>18 be called way -- Webb Road, and from my home out</p> <p>19 to my office is three and a half miles.</p> <p>20 Q. Okay. And just a second ago, you</p> <p>21 said -- but -- that area that shows as timbers,</p> <p>22 that's all been cut now? It's all --</p> <p>23 A. Not all of it, but most of it has.</p>	<p>1 hunt on your property?</p> <p>2 A. That's correct.</p> <p>3 Q. And you still hunt to this day on</p> <p>4 your property, or --</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. What kind of -- what kind</p> <p>7 of wildlife do you hunt on your property?</p> <p>8 A. Well, when I was a boy, we didn't</p> <p>9 have any deer and turkey. We have deer and</p> <p>10 turkey there now.</p> <p>11 Q. Okay.</p> <p>12 A. I do not hunt the turkeys. I let</p> <p>13 them -- I'm trying to let them accumulate more.</p> <p>14 Q. They're hard to hunt too. It</p> <p>15 takes a lot of --</p> <p>16 A. It takes a lot of patience.</p> <p>17 Q. Yeah. But right -- so now, you</p> <p>18 can hunt on your property if you wish to?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. I know your testimony was</p> <p>21 basically -- you testified on the impacts, the</p> <p>22 birds and odors and dust and -- but -- and just</p> <p>23 to make -- I'm understanding what you said</p>

<p style="text-align: right;">Page 57</p> <p>1 right, you were saying in the past there were 2 problems with that, but it's gotten better? 3 A. That's correct. 4 Q. Okay. And now -- so whatever 5 they're doing at the landfill at this point, you 6 really don't have a problem with, because it's 7 improved your situation; is that correct? 8 A. It's concerning the pink area, 9 what they're doing at that landfill right now, 10 because they have reduced the -- they quit 11 taking household garbage. Now, I don't know 12 what's going up there. You can see trucks, and 13 there's some debris planted on the side of the 14 hill. I don't know if it's household garbage or 15 construction debris or what, because I 16 don't -- you know, it's closed. But there's 17 still trucks going in and working on -- dumping 18 stuff on the northwest corner of this municipal 19 solid waste dump. 20 Q. Okay. And you can -- where are 21 you observing this from? Are you seeing this 22 from your home? 23 A. Driving down the road. You can</p>	<p style="text-align: right;">Page 59</p> <p>1 blue. 2 Q. Okay. So the permit was there? 3 You read the permit? 4 A. I clicked on the hyperlink, the 5 Landfill-proposed-permit hyperlink. 6 Q. Okay. And then I think you 7 testified there was the permit and then a 8 whole -- hundred -- hundreds of pages of other 9 documents? 10 A. I think it's 868, I believe is 11 what was printed. 12 Q. Yes, sir. I would agree with you. 13 There's a lot -- 14 A. A lot of them. 15 Q. -- a lot of them. Now, you 16 testified to a couple things, and I guess it's 17 really giving your opinion as toward some of 18 the -- the -- the final slope, three-to-one 19 slopes, and the two working faces, and those 20 types of things. We talked about, a while ago, 21 your occupation. One thing is, you're not an 22 engineer; is that correct? 23 A. No, but I was in the millwright</p>
<p style="text-align: right;">Page 58</p> <p>1 see it from the road. 2 Q. Okay. Now, you testified -- the 3 permit -- you have testified you've looked at 4 the documents. You got the e-mail from 5 Mr. Ludder that directed you to the notice and 6 the draft permit. Now, you've reviewed the 7 draft permit; is that correct? 8 A. I've read -- I would say I've 9 written -- or read probably some of the charts 10 and all. I didn't study them. There are some 11 charts in there that kind of became germane 12 after a while. 13 Q. I -- I understand. But on P-3, I 14 think Mr. Ludder had pointed out the -- and I 15 think you read this a while ago where it tells 16 you -- I guess, read the first sentence again. 17 A. Copies of the land -- and copies 18 of -- with the word, Landfill proposed permits, 19 is hyperlinked -- 20 Q. Okay. 21 A. -- or highlighted in blue -- Are 22 available for public inspection via the ADEM 23 website at -- you know, again, hyperlink in</p>	<p style="text-align: right;">Page 60</p> <p>1 business for a long time. 2 Q. Okay. I think -- I mean, you said 3 you were in the real estate business too. 4 A. Yes. 5 Q. So you've covered a lot of things, 6 and -- but to answer my question, are you an 7 engineer? 8 A. No. 9 Q. Okay. Now, as toward the values 10 you gave on your property, is that something 11 that -- I know you said you're in the real 12 estate business. What are you basing that on? 13 A. I base it off the valuations of 14 other properties in the area, as well as my 15 overview of the real estate market in the Dothan 16 area in general. 17 Q. Okay. So when you said the home 18 was worth 100- to 120,000, is that -- are you 19 saying that's all you can get for it? Is that 20 what the fair market value of it is at this 21 time, or is that what you expect you could get 22 out of it? 23 A. That's probably what I could get</p>

<p style="text-align: right;">Page 61</p> <p>1 out of it, again, because of the landfill issue.</p> <p>2 Q. Okay. Because how</p> <p>3 much -- originally, how much did you pay for the</p> <p>4 home?</p> <p>5 A. I bought it with my -- well,</p> <p>6 actually, it was -- I can't tell you the exact</p> <p>7 amount because, again, I was paying some of my</p> <p>8 mom and dad's bills, and it was a periodic</p> <p>9 thing, and then there's multiple deeds shown and</p> <p>10 deeds of record that shows I own and bought a</p> <p>11 parcel.</p> <p>12 Q. And I -- I -- I --</p> <p>13 A. I would say 100,000 is more or</p> <p>14 less.</p> <p>15 Q. The -- the -- the 65 acres, I</p> <p>16 think you said it once, that's family property</p> <p>17 basically, that's been in your family for a long</p> <p>18 time?</p> <p>19 A. Since 1955.</p> <p>20 Q. Okay. And I think -- and just to</p> <p>21 clarify and make sure I'm -- you were</p> <p>22 there -- you've been at that particular home</p> <p>23 since 1992?</p>	<p style="text-align: right;">Page 63</p> <p>1 BY MR. CARTER:</p> <p>2 Q. Okay. Well, first -- now, you</p> <p>3 said you had reviewed the permit. Let me ask</p> <p>4 you about Section X.</p> <p>5 A. Okay.</p> <p>6 Q. Did you review that portion of the</p> <p>7 permit?</p> <p>8 MR. LUDDER: Your Honor, I'm going</p> <p>9 to have to object. I think what was</p> <p>10 in the public notice or attached to</p> <p>11 the public notice was a draft permit,</p> <p>12 not the final permit. I believe what</p> <p>13 you're showing was the final permit.</p> <p>14 MR. CARTER: Okay. Well, we can</p> <p>15 get the draft permit.</p> <p>16 MR. DAVIS: 11.</p> <p>17 BY MR. CARTER:</p> <p>18 Q. Okay. Mr. Lewis, that's -- on</p> <p>19 Section X of the draft permit which is Joint</p> <p>20 Exhibit Number 11, that talks about the</p> <p>21 variances. Is that -- did you review that part</p> <p>22 of the draft permit?</p> <p>23 A. I -- I don't recall reading this,</p>
<p style="text-align: right;">Page 62</p> <p>1 A. I believe that's correct, yes,</p> <p>2 sir.</p> <p>3 Q. Okay. Now, you testified that you</p> <p>4 believe that if the permit is modified, I think</p> <p>5 was the way Mr. Ludder had asked you about it,</p> <p>6 that -- because you testified about the wetlands</p> <p>7 and the streams?</p> <p>8 A. Yes, sir.</p> <p>9 Q. So at this -- have you -- in</p> <p>10 reading the permit, did you see where it</p> <p>11 authorized building the landfill cell in a</p> <p>12 stream or wetlands?</p> <p>13 A. I saw some footnotes in this area,</p> <p>14 and I'm pointing to the Exhibit</p> <p>15 Number -- whatever we called it -- P-5? P-5.</p> <p>16 And the green, or teal-green color --</p> <p>17 Q. Okay. Let me show you what is</p> <p>18 marked in the joint exhibits as Exhibit 2.</p> <p>19 MR. DAVIS: It's 1.</p> <p>20 MR. CARTER: Oh, is it? Okay. Is</p> <p>21 that the issue -- permit issuance? A</p> <p>22 lot of documents. I'm sorry,</p> <p>23 Mr. Lewis, I got the wrong book.</p>	<p style="text-align: right;">Page 64</p> <p>1 but, you know, there was so much reading, and</p> <p>2 I'm standing here sworn, and I can't recall</p> <p>3 reading it, but I'm reading what it says here.</p> <p>4 It says a variance of three-to-one final slope.</p> <p>5 Q. So that was the -- what you just</p> <p>6 pointed out, that's the variance in</p> <p>7 there -- Number 1 is the variance of the</p> <p>8 three-to-one final slopes? And do you know</p> <p>9 what, when it says three-to-one final slope,</p> <p>10 what it's talking about?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And I think that's what</p> <p>13 you -- you described that earlier. I'm not</p> <p>14 going to make you go through it again.</p> <p>15 A. Right, yes, sir. Based</p> <p>16 on -- you're three foot out, one foot up.</p> <p>17 That's the -- you know, that's</p> <p>18 standard -- generally, it's four to one.</p> <p>19 Q. Right. And that -- and then the</p> <p>20 other variance in here was the one for the</p> <p>21 two -- the two working faces; is that correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Now, in reading that permit and</p>

<p style="text-align: right;">Page 65</p> <p>1 all the associated documents that you said you 2 reviewed, were you aware that there are an MSW 3 landfill and a C&D landfill in this expansion? 4 A. I saw that, yes, sir. 5 Q. Okay. And now for two -- for two 6 working faces -- there's two -- basically two 7 types of landfills there. Wouldn't you think 8 it'd be -- you'd have to have two different 9 working faces? 10 A. No, sir. I still suggest that we 11 only need one if we got to have one. 12 Q. Okay. Well, both -- both of those 13 require -- have different types of requirements 14 to be operated. So would -- I mean -- I'll 15 withdraw that question. 16 Now, Mr. Lewis, you also testified earlier 17 about you had read a portion of the draft permit 18 as it deals with alternative daily cover? 19 A. Correct. 20 Q. Is that -- am I right? 21 A. Yes, sir. 22 Q. And you showed me in the -- in 23 the -- well, I'm sorry. Let me -- I'll get it</p>	<p style="text-align: right;">Page 67</p> <p>1 correct? 2 A. Where are we specifically so -- 3 Q. Still Paragraph H. 4 A. This -- once -- once -- the -- C&D 5 will be covered once a week, and the other one 6 will be covered each day. That's the exceptions 7 there. 8 Q. Okay. 9 A. Or differences, really. 10 Q. Okay. And I think of one other 11 thing you had mentioned in the -- as for the 12 notice on the -- the draft permit. You got that 13 off the website? 14 A. Yes, sir. 15 Q. Okay. Did anybody -- or did you 16 make a request to the Department for any 17 documents associated with the -- with that 18 notice after you reviewed it? 19 A. I don't recall. I've -- I don't 20 recall that. I've made quite a few complaints 21 and/or comments to the parties. 22 Q. Yes, sir. And speaking of 23 comments -- and when the public notice -- after</p>
<p style="text-align: right;">Page 66</p> <p>1 narrowed down for you a little bit. 2 Okay. If you would, let's go -- it's Page 3 8 of 14. 4 A. One more. 5 Q. There we go. All right. Okay. 6 And do you remember reading Paragraph H there? 7 That's the Cover Requirements under the draft 8 permit. 9 A. I do recall reading some of this, 10 yes, sir. 11 Q. Okay. Does it say anything about 12 alternative daily cover? 13 A. No, sir, but somewhere in the 14 process I read that, and this is in this overall 15 document. 16 Q. Okay. But you would agree with me 17 that that doesn't allow alternative daily cover? 18 A. It doesn't say there specifically 19 in Paragraph H of Page 8 of 14. It does not. 20 Q. And now it also points out that 21 they have cover requirements for the municipal 22 solid waste and cover requirements for the 23 construction and demolition waste; is that</p>	<p style="text-align: right;">Page 68</p> <p>1 you got the public notice that Mr. Ludder had 2 sent you, you did comment on it; is that right? 3 A. I believe I did, yes, sir. 4 Q. You filed a comment with the 5 Department? 6 A. I -- you know, I -- again, 7 specifically that, I can't -- I'm not going to 8 sit here and say yes or no, because I filed so 9 many complaints and/or comments, different 10 things regarding not just this, but problems 11 with this (indicating) as well. 12 Q. Right. 13 A. And, you know, to -- to say 14 specifically X or Y, I can't say. I can tell 15 you that I absolutely have filed multiple 16 complaints. 17 Q. Okay. And now -- and one other 18 thing. You've voiced your concern that with an 19 expansion of the solid waste landfill, that you 20 were concerned that they were going to be taking 21 in more waste; is that correct? 22 A. Yes, sir. 23 Q. Now, you've reviewed the permit.</p>

<p style="text-align: right;">Page 69</p> <p>1 Did you see the part where it basically says 2 their -- their total volume is not increasing? 3 A. I did, but it also says they 4 can -- again, and I use this term, "Mother, may 5 I," saying ADEM's "Mother" and the City being 6 "May I," it appears to me that they just make a 7 phone call, and you guys can grant it. 8 That's what it appears to me. 9 Q. Actually, I think a modification 10 of the permit. Did you realize that? 11 A. Yes, sir. 12 Q. So it's not just a phone call to 13 pick up to do things like that. 14 All right. Now, when you reviewed the 15 draft permit, and I think from the information 16 you got off the website, now, that -- on the 17 cover sheet for the -- on Page 1 of 14 and... 18 A. Okay. 19 Q. Okay. Now, you notice in the 20 third paragraph on that -- if you would, read 21 that first sentence for me. 22 A. This permit is based on the 23 information submitted to ADEM on October 18th,</p>	<p style="text-align: right;">Page 71</p> <p>1 Q. Yes, sir. 2 (A discussion was held off the 3 record.) 4 MR. CARTER: Okay. Nothing further 5 for Mr. Lewis. Thank you. 6 HEARING OFFICER: Mr. White? 7 CROSS-EXAMINATION 8 BY MR. WHITE: 9 Q. Mr. Lewis, you have pointed out 10 some areas on your Exhibit Number 5, if I can 11 find -- 12 A. C-5 [verbatim]? 13 Q. Yes. 14 A. Okay. 15 Q. You pointed to areas where you 16 have made numerous complaints over the years; is 17 that right? 18 A. I've made complaints, yeah. 19 Q. And you point to them, and 20 I'd like for you to be a little more specific, 21 if you would. I believe you pointed to the area 22 shaded orange on -- on the colored map; is that 23 correct?</p>
<p style="text-align: right;">Page 70</p> <p>1 2012, for permit renewal, on January 26th, 2015 2 for permit modification, and known as the Permit 3 Application hereby incorporated and hereby 4 incorporated in reference herein referred to as 5 applications, end parentheses [verbatim]. Any 6 inaccuracies found in this information could 7 lead to termination of 8 modification -- termination or modification of 9 this permit and potential enforcement action. 10 The permit must inform ADEM -- Permittee must 11 inform ADEM of any deviation from or any changes 12 to -- in the information in the application that 13 would affect the Permittee's ability to comply 14 with the applicable ADEM Administrative Code or 15 permit conditions. 16 Q. So you would say -- I mean, based 17 on my question, so in that sentence right there, 18 the draft permit adopts anything -- any of the 19 information that would be found in the 20 application itself? 21 A. Well, taking that at face value, 22 I'd say yes, but I don't take things at face 23 value. I have reasonable history.</p>	<p style="text-align: right;">Page 72</p> <p>1 A. I wouldn't call that orange. 2 Q. Whatever -- whatever color -- 3 A. Maybe peach? 4 Q. Peach? 5 A. Yeah, I'd call that a peach. 6 Q. Okay. And does that -- is that 7 labeled as something? 8 A. It says, Closed Landfill. I would 9 challenge the "closed" part. 10 Q. Okay. Do you dispute that the 11 landfill directly across from your house is 12 closed? 13 A. Sir, I've lived there all 14 my -- most of my adult life, and they continue 15 to work out there, and I would -- I would assert 16 that my complaints have been based off 17 observation. And I did not really start 18 formally complaining until -- I don't recall the 19 exact first time, but taken multiple histories 20 over the course of my lifetime, I've complained 21 at various times about any one of the landfills 22 in or around my house. 23 Q. All right. My -- my question is,</p>

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<p>1 you reference the peach landfill directly across 2 from your house as a landfill belonging to the 3 City of Dothan that caused you to make 4 complaints about the operation; is that correct? 5 A. About what I deem to be illegal 6 operation. 7 Q. Okay. And do you have 8 any -- what's your best estimate as to when you 9 made that complaint, and what was the subject? 10 A. I made complaints 11 concerning -- this is called Landfill Drive. 12 It's the drive that comes through. It's the 13 municipal solid waste, Permit Number 3501. 14 Unless it's been changed, that's what that 15 permit number was. And this area over to the 16 right of that, which I would call green, light 17 green, maybe teal, is a borrow pit where you 18 haul dirt -- the City haul dirt from this site 19 to cover the garbage on this site. And that's 20 Permit Number 35-06 and the borrow pit for it. 21 Q. Have you ever been on this 22 property that you described as being colored 23 peach?</p>	<p>1 MR. LUDDER: Your Honor, I'd like 2 to -- 3 THE WITNESS: I -- I -- 4 MR. LUDDER: No, excuse me. Your 5 Honor, I object -- 6 THE WITNESS: Okay. 7 MR. LUDDER: -- on relevancy 8 grounds. We're discussing a closed 9 landfill which is not the subject of 10 this proceeding. 11 HEARING OFFICER: Overruled. 12 A. I may -- I need to add to this. 13 Mr. White, as a boy, growing up as a young man, 14 my family farmed that land as well. 15 Q. I believe you said you fished 16 there too, didn't you? 17 A. We've caught fish in this creek in 18 years past. 19 Q. Okay. And you said it's now 20 restricted, and you're not allowed to do that; 21 is that correct? 22 A. Well, we don't have access permit. 23 I mean, the City of Dothan owns it. And there</p>
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<p>1 A. I have when I've been to the 2 landfill. 3 Q. Okay. What's your purpose for 4 going to the landfill? 5 A. When it was in operation. 6 Q. Okay. And what was your purpose 7 for going on the landfill? 8 A. It was on that landfill, to go 9 there. 10 Q. For what purpose did you go? 11 A. I mean, you -- what do you go to a 12 dump for? To dump stuff. 13 Q. Well, I'm asking you. What was 14 your reason for going -- 15 A. For going to the dump. 16 Q. You were going to the dump to do 17 what? 18 A. To dispose of garbage. 19 Q. Thank you. 20 A. Okay. 21 Q. Have you ever seen equipment out 22 there? 23 A. And I may add one other thing.</p>	<p>1 are signs all along the road right of way 2 saying, City of Dothan, no trespassing. 3 Q. Okay. And the only time you've 4 been on there, on this property, was when you 5 were dumping garbage; is that correct? 6 A. When we farmed it, or when I was 7 there, you know. For -- at times, I've been out 8 there to see city employees over the years, 9 Mr. White. 10 Q. So you've been out there for other 11 purposes than to dump garbage? 12 A. We farmed it as a boy growing up, 13 as a young man. I've been out there to carry 14 garbage out there. I've been out there to see 15 city employees in times past. 16 Q. Have you ever been on city 17 equipment while you were out there? 18 A. Never. 19 Q. Okay. Now, you said that you 20 hunted and fished on this property. 21 A. I've -- 22 Q. When was the last time you hunted 23 and fished?</p>

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<p>1 A. On this property?</p> <p>2 Q. Anywhere on this exhibit.</p> <p>3 A. On my property right here, I</p> <p>4 hunted deer in deer season. I hunted the last</p> <p>5 day of deer season directly behind my house.</p> <p>6 Q. Okay.</p> <p>7 A. That was January 31st.</p> <p>8 Q. Okay. Now, directly behind your</p> <p>9 house, is there a landfill?</p> <p>10 A. To the northeast.</p> <p>11 Q. Did you hunt on that landfill?</p> <p>12 A. No, sir.</p> <p>13 Q. Okay.</p> <p>14 A. The City of Dothan owns the</p> <p>15 property.</p> <p>16 Q. And how long has that landfill</p> <p>17 been there?</p> <p>18 A. Back in the '70s, if I recall</p> <p>19 right.</p> <p>20 Q. Okay. But that property is not</p> <p>21 shown on Petitioner 5; is that correct?</p> <p>22 A. No, sir. It lies to the</p> <p>23 north -- and I'm saying to the north. I'm</p>	<p>1 Q. Now, you said that that</p> <p>2 landfill --</p> <p>3 A. Now, Mr. White, may I interject</p> <p>4 something? You said she gave me the property.</p> <p>5 She did not give me the property. The property</p> <p>6 that my mom and dad gave me, they gave me an</p> <p>7 acre of land, and I don't recall the date, but</p> <p>8 it was back in the '70s, and I bought an acre of</p> <p>9 land.</p> <p>10 Q. Okay.</p> <p>11 A. And that was prior to this</p> <p>12 landfill to the south.</p> <p>13 Q. And that was a conveyance from</p> <p>14 your mother, Bernice Lewis?</p> <p>15 A. That was from Shellie and</p> <p>16 Bernice -- Shellie Lewis and Bernice Lewis.</p> <p>17 Q. Let me show you what's been marked</p> <p>18 for identification purposes -- Intervenor --</p> <p>19 THE WITNESS: There's a sticky</p> <p>20 note.</p> <p>21 Q. -- Exhibit Number 1 and ask you</p> <p>22 if you can identify that document.</p> <p>23 A. It's when the land was conveyed</p>
Page 78	Page 80
<p>1 looking -- I'm -- I'm sitting on the south</p> <p>2 end -- south side of this map, and I'm looking</p> <p>3 back to the north/northeast from where I'm</p> <p>4 actually sitting here looking at it.</p> <p>5 Q. Okay. Was that landfill there</p> <p>6 when you purchased your property or when you</p> <p>7 were given that property by your parents -- by</p> <p>8 Bernice, your mother?</p> <p>9 A. The one to the north?</p> <p>10 Q. Yes.</p> <p>11 A. Some of it, yes, sir.</p> <p>12 Q. Some of the landfill?</p> <p>13 A. The one to the north, yes, sir.</p> <p>14 Q. Or the whole landfill to the</p> <p>15 north?</p> <p>16 A. The whole -- not all of my land,</p> <p>17 but some -- the landfill to the north, when</p> <p>18 I -- after my mother -- after my daddy died in</p> <p>19 1983, the landfill was prior to that, yes, sir.</p> <p>20 Q. Okay. Was the landfill across the</p> <p>21 street when your mother gave you the property in</p> <p>22 1988?</p> <p>23 A. Yes, sir.</p>	<p>1 with the life estate -- life estate from my</p> <p>2 mother to me. And January 22nd, 1988 is when</p> <p>3 it's dated and timestamped.</p> <p>4 Q. Thank you.</p> <p>5 MR. WHITE: We offer City 1.</p> <p>6 MR. LUDDER: No objection.</p> <p>7 HEARING OFFICER: It's admitted.</p> <p>8 (Exhibit No. I-1 was admitted</p> <p>9 into evidence.)</p> <p>10 THE WITNESS: Right here.</p> <p>11 MR. WHITE: I don't want to lose</p> <p>12 any of these exhibits.</p> <p>13 THE WITNESS: Right here.</p> <p>14 MR. WHITE: We'll put it over here</p> <p>15 with this. Thank you, sir.</p> <p>16 BY MR. WHITE:</p> <p>17 Q. So you had a landfill close behind</p> <p>18 you when you bought it, and you had a landfill</p> <p>19 operating across from you when you bought it; is</p> <p>20 that correct?</p> <p>21 A. When I was deeded the property?</p> <p>22 Q. Or when you were deeded the</p> <p>23 property, excuse me.</p>

<p style="text-align: right;">Page 81</p> <p>1 A. Now, remember, there's multiple</p> <p>2 deeds at multiple dates, Mr. White.</p> <p>3 Q. Well, let's refer to this one.</p> <p>4 A. Okay. This one right here, when</p> <p>5 there was a landfill to the north and to the</p> <p>6 south of me, the answer is yes.</p> <p>7 Q. Thank you. Now, you've asked this</p> <p>8 hearing to be convened today; is that correct?</p> <p>9 A. I've asked -- I've appealed to the</p> <p>10 ADEM's ruling to give you guys a modification,</p> <p>11 Mr. White.</p> <p>12 Q. Okay. And are you asking the</p> <p>13 Commission then to reject that modification?</p> <p>14 A. Yes. I mean, I'm asking the</p> <p>15 Commission to do all they can -- I'm doing what</p> <p>16 the law allows me to do, Mr. White, nothing</p> <p>17 more, nothing less. If -- my druthers is the</p> <p>18 City of Dothan got out of the landfill business.</p> <p>19 Q. So you're not asking that the</p> <p>20 expansion be stopped?</p> <p>21 A. I'm asking that the permit, as</p> <p>22 permitted, as shown -- as shown on the website,</p> <p>23 not be allowed.</p>	<p style="text-align: right;">Page 83</p> <p>1 BY MR. WHITE:</p> <p>2 Q. Are you objecting to the entire</p> <p>3 expansion, or just part of it?</p> <p>4 A. I'm objecting to the expansion.</p> <p>5 Q. The entire expansion?</p> <p>6 A. As much as I can object to, that's</p> <p>7 what I'm here to do.</p> <p>8 Q. All right. Are you asking that</p> <p>9 the City be stopped from depositing waste</p> <p>10 anywhere on that site, the proposed site?</p> <p>11 A. My preference is yes.</p> <p>12 Q. Okay. Has this proposed expansion</p> <p>13 caused you any harm?</p> <p>14 A. Currently, no, with -- I</p> <p>15 would -- I would add one exception, Mr. White.</p> <p>16 Prior to the City owning -- buying this tract of</p> <p>17 land, I hunted and had access to the property.</p> <p>18 So I would say, yeah, there's been some there,</p> <p>19 just by the mere acquisition. Some of the best</p> <p>20 dove hunts I've ever been on in my life is right</p> <p>21 there in those fields.</p> <p>22 Q. I believe in your petition, you</p> <p>23 state that your property value -- well, the</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Okay. Are you objecting to any</p> <p>2 part of the expansion?</p> <p>3 A. I am.</p> <p>4 Q. Okay. Are you objecting to all of</p> <p>5 the expansion?</p> <p>6 A. I prefer to object to all of it,</p> <p>7 yes, sir.</p> <p>8 Q. But listen to my question.</p> <p>9 A. I understand what you're asking.</p> <p>10 Q. Are you or are you not objecting</p> <p>11 to the total expansion as proposed and shown</p> <p>12 in --</p> <p>13 A. As proposed, I'm --</p> <p>14 MR. LUDDER: Your Honor, I object to</p> <p>15 the question. What he's asking for is</p> <p>16 reflected in the request for hearing.</p> <p>17 HEARING OFFICER: It is, and the</p> <p>18 documents will prove themselves, but</p> <p>19 this is cross-examination. If he</p> <p>20 wants to ask him that question, he</p> <p>21 can.</p> <p>22 THE WITNESS: Ask the question</p> <p>23 again, Mr. White.</p>	<p style="text-align: right;">Page 84</p> <p>1 expansion threatens to keep your property value</p> <p>2 depressed for the next 15 to 20 years; is that</p> <p>3 correct?</p> <p>4 A. For the duration of any landfill.</p> <p>5 Q. Okay. It threatens to do that?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. Can you tell us when your</p> <p>8 property began to be depressed, if at all?</p> <p>9 A. Well, Mr. -- I'll answer this way:</p> <p>10 When was it depressed? Whatever leadership has</p> <p>11 been in Dothan has promised those of us out</p> <p>12 there there'd never be any more expansions.</p> <p>13 We've obviously not been told the truth. And</p> <p>14 we've relied on that, and I relied on that,</p> <p>15 Mr. White. When this was across the road, I</p> <p>16 tried to be a good neighbor. I've not</p> <p>17 complained overtly. I've seen things that I</p> <p>18 know without a shadow of a doubt was in</p> <p>19 violation of the permit, especially now that</p> <p>20 I've read so much of it, Mr. White. And at the</p> <p>21 end of the day, because of the continuation in</p> <p>22 our area of town -- if it's moved, it's gone,</p> <p>23 it's gone. At some point in time, the</p>

<p style="text-align: right;">Page 85</p> <p>1 valuations will come back, and I use a prime 2 example. You know Dothan as -- maybe not as 3 well as I do, or maybe you do. The area that 4 lies to the north of 231 by the UPS station at 5 one time was a landfill prior to moving to the 6 east side of town. It's one of the better 7 subdivisions in Dothan now, and one of the 8 private schools is adjacent to that site. 9 Northside Methodist Academy is across the road. 10 And so if the landfill closes and goes away, at 11 some point in time, the valuations come back, 12 and that's historically been proven true almost 13 anywhere in the United States. 14 Q. Thank you. Again, your 15 allegations are that this expansion threatens to 16 keep your property value depressed for the next 17 15 to 20 years? 18 A. That's correct. 19 Q. Okay. And by that, I assume you 20 mean that it is already depressed, and that this 21 will make it continue to be so; is that correct? 22 A. I would say that's a fair 23 assessment.</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Okay. 2 A. I also know some things that's not 3 in this document. I'd like to know where the 4 rest of the paperwork is at. 5 Q. Okay. Now, this deed is from your 6 parents to the City for a landfill, is it not? 7 A. It's my -- 8 Q. What's the date on that? 9 A. 1973. 10 Q. Thank you. 11 MR. WHITE: We'd offer Intervenor 12 2. 13 MR. LUDDER: I object, Your Honor. 14 The Witness didn't authenticate it. 15 HEARING OFFICER: It's admitted. 16 (Exhibit No. I-2 was admitted 17 into evidence.) 18 MR. WHITE: Thank you. 19 BY MR. WHITE: 20 Q. You're not testifying that the 21 City pulled a fast one on your parents and built 22 a landfill on the property that they sold them 23 without their knowing it? Do you --</p>
<p style="text-align: right;">Page 86</p> <p>1 Q. Okay. Well, my question then is: 2 When did it become depressed? 3 A. I can't put a definitive time 4 frame there. 5 Q. Do you have any idea what is 6 causing the depressed value? 7 A. The landfills. 8 Q. Okay. And the landfills preceded 9 your ownership, did they not? 10 A. They did not precede my family's 11 ownership, no, sir. My mom and dad bought the 12 property in 1955. 13 (A discussion was held off the 14 record.) 15 BY MR. WHITE: 16 Q. Mr. Lewis, let me show what's been 17 marked for identification purposes as Intervenor 18 Exhibit 2 and ask you if you can identify this 19 document. 20 A. It's a deed from my mom and dad to 21 the City of Dothan. 22 Q. Okay. Did you know they did that? 23 A. I did.</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I'd like to know where the 2 original paper -- rest of the paperwork is at. 3 Q. If you would, please, sir, answer 4 my question. 5 A. Am I saying that? I can tell you 6 that Mr. Driggers coerced my daddy and convinced 7 my daddy to sell that land. If my daddy had 8 been told the truth, Mr. White, he would not 9 have under no circumstances sold the City of 10 Dothan land. But Mr. Driggers, the Mayor of 11 Dothan at the time, was dishonest with my mom 12 and dad, and my mom and dad, thinking they were 13 doing him justice and being a good neighbor and 14 a good friend to the community was misled by the 15 Mayor of the City of Dothan. And that much, 16 sir, is a cold hard fact. And the three people 17 that could attest to that is all in the ground. 18 Q. But you just did, though, didn't 19 you? 20 A. I just attested to the fact that 21 my parents deeded a parcel of land to the City 22 of Dothan, 40 acres, because Mr. Driggers, the 23 Mayor of Dothan, promised and coerced my daddy</p>

<p style="text-align: right;">Page 89</p> <p>1 and mother. And, yeah, they deeded it, and it 2 was for the purpose of the landfill. At that 3 time, they were called "dumps." It wasn't 4 called "landfills." 5 Q. Have you had your property 6 appraised since you bought it? 7 A. My mom -- I paid my mother. I 8 didn't have to have a mortgage on that. 9 Q. Let me -- 10 A. Have I got it -- a current 11 appraisal on the property? No, sir. 12 Q. Have you had it appraised at any 13 time since you bought it? 14 A. When I financed my home, the bank 15 did an appraisal. 16 Q. Okay. Do you have that here? 17 A. I do not. 18 Q. Okay. Do you know what the value 19 was? 20 A. 200,000. 21 Q. All right. 22 A. I don't recall the exact amount, 23 but around 200,000.</p>	<p style="text-align: right;">Page 91</p> <p>1 the paperwork, it will be capped. Now, capped 2 has a -- you know, that's just reading the 3 different documents. 4 Q. I believe you also said it's still 5 accepting waste; is that correct? 6 A. There's still some trucks going 7 and dumping on the northwest corner of that 8 property. I can't tell you what it is, because 9 I don't go on the property. 10 Q. Okay. But you've seen trucks 11 going there with garbage, solid waste? 12 A. I've seen trucks dumping something 13 besides dirt. They dump -- they go up there 14 dumping something. 15 Q. Okay. Into a landfill that's 16 being closed? 17 A. Well, that's what -- I'm being 18 told it's being closed. 19 Q. Okay. All right. Have you made 20 any comments regarding the two working faces? 21 A. Have I made comments? I testified 22 to it earlier. 23 Q. Okay. And that's it? That's the</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. So that's different than the value 2 you testified to earlier? 3 A. That's different to the value it 4 is today, sir. 5 Q. Okay. 6 A. I think I'm right saying that 7 appraisal was done back in the -- sometime in 8 the '90s. I don't recall the exact date. 9 Q. All right. And you don't have 10 that report with you today? 11 A. No, sir. 12 Q. Okay. I believe you testified 13 that the landfill shown in pink on Petitioner 5 14 is closed; is that correct? 15 A. It's in the process of being 16 closed. 17 Q. What do you mean by that? 18 A. Well, based upon new reports, 19 my -- attending the Commission meetings and 20 other meetings, you know, involved with this 21 proposed expansion modification, it's proposed 22 to be closed and in the process of being closed. 23 And at some point in time, again, reading all</p>	<p style="text-align: right;">Page 92</p> <p>1 extent of your comments? 2 A. I made quite a few comments. Do 3 I -- do I know for sure I made two comments? I 4 know I testified today about two comments. I 5 can attest to that. 6 Q. Are you telling this tribunal that 7 you responded to the public notice by making 8 comments and objection to the two working faces 9 as proposed in the draft permit? 10 A. I think my comments is in our 11 complaint, sir. 12 Q. Well, sir, just please answer my 13 question. 14 A. I've -- I've answered it. The two 15 comments that are in the complaint. 16 Q. And those are the comments, are 17 they not, that make no mention whatsoever of the 18 two working faces? 19 A. I... 20 HEARING OFFICER: Do you know? 21 THE WITNESS: I truthfully don't 22 know, sir. 23 HEARING OFFICER: All right.</p>

<p style="text-align: right;">Page 93</p> <p>1 THE WITNESS: I've read so much of 2 the documents at times -- 3 HEARING OFFICER: Mr. Lewis, if you 4 don't know, you don't know. 5 THE WITNESS: Okay. 6 BY MR. WHITE: 7 Q. Okay. Do you know whether the 8 comments that you made objected in any fashion 9 to the final cover slope? 10 A. I didn't realize some of that 11 until the last few days, sir. 12 Q. That -- 13 A. I mean, the cover slope, you know. 14 We go back to some of these e-mail stuff that I 15 got from Mr. Ludder last week in asking these 16 questions, and then I go back, and I review and 17 dissect it again, and the four to one and three 18 to one, and I do know the difference between 19 four to one and three to one. 20 Q. Yes, sir. But you understand my 21 question? 22 A. Would you restate it? And I'll 23 make sure I do.</p>	<p style="text-align: right;">Page 95</p> <p>1 A. Not that I recall. I don't 2 remember making -- 3 Q. Do you challenge it today? 4 A. I would say that the water quality 5 is definitely not correct. 6 Q. And what water are you referring 7 to? 8 A. There's an unnamed tributary, Golf 9 Creek, that runs through that property. 10 Q. Okay. And what do you base that 11 statement on? 12 A. Based on my living there all my 13 life and observing the wildlife and the fish and 14 habitat that no longer exists there, sir. 15 Q. Did you make any comments to the 16 Corps permit? 17 A. Not that I recall. 18 Q. Why not? 19 A. I don't remember seeing a legal 20 notice on that, quite frankly speaking. 21 Q. Are you disputing there was one? 22 A. I know that I've read it in the 23 paperwork, okay? Now, did I see the legal</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. Did you make any comments in 2 response to the draft permit regarding the final 3 cover slope? 4 A. I don't recall, I don't recall. 5 Q. You don't know? What was -- what 6 your -- 7 A. I don't recall. 8 Q. Okay. Did you make any comments 9 regarding any pollution into the wetlands or the 10 waters of the state of Alabama as a result from 11 the expansion of 35-06? 12 A. I don't -- I made comments and 13 complaints. I can't recall which one it was 14 about, sir. I do know that I made comments and 15 complaints. I do know that I attended the City 16 Commission meeting where they took this entire 17 tract of land and made it 534 acres, and I don't 18 know if it all is one permit now, or there's two 19 permits still. I don't know. 20 Q. Did you make any challenge to 21 ADEM's Water Quality Certification? 22 A. Not that I recall. 23 Q. Why not?</p>	<p style="text-align: right;">Page 96</p> <p>1 notice on that? I don't recall seeing that 2 legal notice. 3 Q. Okay. Is there any construction 4 going on at the -- on the proposed site? 5 A. They have moved the powerline. 6 They've been -- the City of Dothan has. I don't 7 know if the City did it, the City employees, or 8 if Alabama Power moved that, because I don't go 9 on that property. I do drive up there with 10 Mr. McArdle, because he farms part of that 11 property. I help him when he needs me as a 12 neighbor. But I avoid going on that property 13 strictly because of this conflict. 14 Q. Okay. Let me ask the question 15 again. We'll be clear. I'm asking you if 16 there's any construction or has there been any 17 construction by the City for the purposes of 18 this landfill development on the proposed site? 19 A. For sure, you can see the 20 powerlines has been moved, so that's 21 construction. 22 Q. Okay. 23 A. So the answer would be yes. You</p>

<p style="text-align: right;">Page 97</p> <p>1 can see that from the road.</p> <p>2 Q. Okay. But you don't know who did</p> <p>3 that?</p> <p>4 A. I do not.</p> <p>5 Q. Okay. Is --</p> <p>6 A. I would add there that in the</p> <p>7 Commission meetings when it was talked about, I</p> <p>8 think Mr. Corbin -- and I don't know if he had</p> <p>9 testified -- he can attest -- he commented or</p> <p>10 somebody within the Public Works commented about</p> <p>11 the City employees was going to move the</p> <p>12 powerline with Alabama Power approval. And I</p> <p>13 may not remember that correctly, but it was</p> <p>14 something to do about that powerline and the</p> <p>15 City of Dothan employees, and then Alabama Power</p> <p>16 employees.</p> <p>17 Q. Is that all that you know about</p> <p>18 any construction on the proposed --</p> <p>19 A. There's been some monitoring wells</p> <p>20 drilled on that property. You can see those</p> <p>21 from the road.</p> <p>22 Q. Okay. Anything else?</p> <p>23 A. Last fall, when I was driving</p>	<p style="text-align: right;">Page 99</p> <p>1 A. And Mr. McArdle has -- part of</p> <p>2 that farm that is the subject property -- he's a</p> <p>3 tenant on it as far as an agricultural tenant.</p> <p>4 Q. And you were helping him do what?</p> <p>5 A. Farm. We were -- that particular</p> <p>6 day -- let's see if I can find the field -- the</p> <p>7 property. You can barely see the field, but</p> <p>8 lying to the south of the subject property</p> <p>9 is -- we refer to it as Ms. Whiddon's place, or</p> <p>10 Ida Whiddon's place, this property right here.</p> <p>11 And there's a road that -- it traverses and</p> <p>12 drives right up through here and comes back out</p> <p>13 up to the houses. And we come from this field,</p> <p>14 drive right down through here, and right over</p> <p>15 this area was an illegal dump that I observed,</p> <p>16 and I made comments and complaints to ADEM.</p> <p>17 Q. All right. Well, just to be</p> <p>18 clear, I'm not talking about there.</p> <p>19 A. Okay.</p> <p>20 Q. I'm talking about the proposed</p> <p>21 site for which we're here today.</p> <p>22 A. I've not been over there.</p> <p>23 Q. Okay. So was there or was there</p>
<p style="text-align: right;">Page 98</p> <p>1 Mr. McArdle over there, there was a large</p> <p>2 unauthorized dump on the side.</p> <p>3 Q. Well, Mr. McArdel, who is that?</p> <p>4 A. He is the tenant that farms</p> <p>5 that -- he is the one that's farmed that land</p> <p>6 since 1958.</p> <p>7 Q. Did he call you about it? Or did</p> <p>8 you find it?</p> <p>9 A. I was with him -- I was there.</p> <p>10 It's in the complaints that I made with -- to</p> <p>11 ADEM, sir.</p> <p>12 Q. Well, let me ask it -- let me ask</p> <p>13 you again, okay? Did he call you about it?</p> <p>14 A. Mr. McArdle?</p> <p>15 Q. Yes.</p> <p>16 A. No, sir.</p> <p>17 Q. Did you find it?</p> <p>18 A. Yes.</p> <p>19 Q. What were you doing there?</p> <p>20 A. I was with -- I'm -- I'm helping</p> <p>21 my neighbor with his farming operation,</p> <p>22 Mr. White.</p> <p>23 Q. Okay.</p>	<p style="text-align: right;">Page 100</p> <p>1 not a dump on that property?</p> <p>2 A. In this particular -- in this</p> <p>3 particular piece of property, I've not been on</p> <p>4 it. On that teal-green-colored piece of</p> <p>5 property, I've not been on it.</p> <p>6 Q. So then there has been, to your</p> <p>7 knowledge, no illegal dump on the proposed site?</p> <p>8 A. Again, there's 534 acres that's</p> <p>9 what it says was changed in the City Commission</p> <p>10 meeting. It was voting on. I was at that</p> <p>11 Commission meeting. I opposed it, and this</p> <p>12 entire tract of land, and right adjacent to the</p> <p>13 subject C&D proposed expansion area was an</p> <p>14 illegal dump, or what I would deem as an illegal</p> <p>15 dump, and that's how I complained.</p> <p>16 Q. And your testimony, therefore, is:</p> <p>17 No, it was not?</p> <p>18 A. My testimony is, is I observed an</p> <p>19 illegal dump on a 534-acre parcel that is shown</p> <p>20 as this all inclusive of landfill property.</p> <p>21 Q. So you aren't saying -- you're</p> <p>22 testifying under oath today that you did find</p> <p>23 one on the proposed site here?</p>

<p style="text-align: right;">Page 101</p> <p>1 A. I'm not -- on this particular 2 piece of property, I've not been on it. The 3 only thing I can tell you is, you can see the 4 powerlines, because I was planting in this 5 field. You can see the powerlines from this 6 field. 7 Q. Thank you. 8 A. And that's as close as I've been 9 to it. 10 Q. Is the proposed section -- and 11 I -- and I really would focus the Court's 12 attention here on the proposed site. 13 A. Okay. 14 Q. And is that not the proposed site 15 right here? 16 A. This is the proposed municipal 17 solid waste landfill site based in a teal-green 18 color. I've not observed anything on that, 19 because I've not been on it. 20 Q. Have you noticed any use of that 21 teal-green-colored property as a solid waste 22 disposable -- disposal facility? 23 A. Only thing I can see, and you can</p>	<p style="text-align: right;">Page 103</p> <p>1 that that expansion has not caused you any 2 adverse impacts as of yet? 3 A. As of yet. The keyword "yet." 4 Yes. 5 Q. And do you expect, once that 6 operation -- or once that landfill becomes 7 operational -- do you expect the same kind of 8 effects from that operation as you have 9 experienced from the existing landfill? 10 A. Absolutely. 11 Q. And why is that? 12 A. That nothing changed with the 13 management or the governing body of our city 14 concerning the landfill, and as far as I can 15 observe, the implementation and the enforcement 16 of the regulations by ADEM. 17 Q. So you expect the operation of the 18 expansion to be -- 19 MR. WHITE: Objection, leading. 20 A. I would expect expansion -- 21 MR. WHITE: Wait, objection. 22 THE WITNESS: Okay. 23 MR. LUDDER: All right. I'll</p>
<p style="text-align: right;">Page 102</p> <p>1 see this from what I'm talking about, is it 2 looks -- appears to be -- it's been bush -- or 3 mowed. 4 Q. My question -- 5 A. No, sir. 6 MR. WHITE: Thank you. That's all. 7 HEARING OFFICER: Anything further? 8 MR. WHITE: No, sir. 9 HEARING OFFICER: Redirect? 10 MR. LUDDER: Yeah. 11 THE WITNESS: David, could you 12 bring me my bottle of water, please, 13 sir? 14 REDIRECT EXAMINATION 15 BY MR. LUDDER: 16 Q. All right. Mr. Lewis, you have 17 testified under cross-examination by Mr. White 18 that there hasn't been any disposal in the 19 teal-green area of the proposed landfill 20 expansion, correct? 21 A. Not that I've observed. I have 22 not been on it. 23 Q. Okay. And I believe you testified</p>	<p style="text-align: right;">Page 104</p> <p>1 withdraw the question. 2 HEARING OFFICER: Okay. Thank you. 3 BY MR. LUDDER: 4 Q. So is it -- would you 5 characterize -- or would you characterize the 6 effects from the landfill expansion as "future 7 effects"? 8 A. I would, definitely. Future 9 potential effects. Absolutely. 10 Q. Future potential effects? 11 A. Yes. 12 Q. Okay. Let me refer you back to 13 Exhibit J-11 -- I believe it might be this one, 14 yes -- and ask you to turn to Page 8. All 15 right. 16 On Page 8, there's a Paragraph H dealing 17 with Cover Requirements. 18 Would you just read that first sentence? 19 A. It's bold print. It starts out 20 Cover Requirements underlined, and it says, 21 Permittee -- Permittee shall cover all wastes as 22 required by 35 -- excuse me -- 335-13. 23 Q. All right. Do you know what</p>

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<p>1 335-13 is?</p> <p>2 A. I -- it's an ADEM regulation, I</p> <p>3 guess.</p> <p>4 Q. Okay. Do you know if that</p> <p>5 regulation speaks to cover requirements?</p> <p>6 A. I -- I don't know if it does or</p> <p>7 don't [verbatim].</p> <p>8 Q. Okay. Does that -- it's been</p> <p>9 pointed out previously in your testimony that</p> <p>10 the language of Paragraph H does not specify</p> <p>11 anything about alternative covers, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Does it specify anything about</p> <p>14 earth cover?</p> <p>15 A. It does not.</p> <p>16 Q. Okay. And would you turn to</p> <p>17 Section 10 of Exhibit J-11, Section Roman X?</p> <p>18 A. Okay. I'm sorry. My bad. I was</p> <p>19 thinking Page 10.</p> <p>20 Q. All right. Paragraph 2, that's</p> <p>21 the part of the paragraph that authorizes two</p> <p>22 working faces, correct?</p> <p>23 A. It appears to, yes, sir.</p>	<p>1 HEARING OFFICER: I do not think</p> <p>2 so.</p> <p>3 THE WITNESS: P-5?</p> <p>4 MR. LUDDER: Yeah. All right. Let</p> <p>5 me -- if I may, let me mark as Exhibit</p> <p>6 P-5.1 the drawing which is titled,</p> <p>7 Boundary Sketch, that we've been</p> <p>8 referring to in all of P-5.</p> <p>9 HEARING OFFICER: Okay.</p> <p>10 MR. WHITE: No objection.</p> <p>11 MR. LUDDER: I just want to offer</p> <p>12 that one page as my exhibit.</p> <p>13 HEARING OFFICER: You're not</p> <p>14 offering P-5?</p> <p>15 MR. LUDDER: I'm not offering P-5.</p> <p>16 MR. WHITE: I'm sorry. Wait.</p> <p>17 I'm -- I misunderstood. What are you</p> <p>18 offering?</p> <p>19 MR. LUDDER: I'm offering</p> <p>20 P -- Exhibit P-5.1 as this one page</p> <p>21 from Exhibit P-5.</p> <p>22 MR. WHITE: Okay. Well --</p> <p>23 HEARING OFFICER: Are you going to</p>
Page 106	Page 108
<p>1 Q. Okay. Does it say where those two</p> <p>2 working faces have to be?</p> <p>3 A. It only says, Confined in</p> <p>4 [verbatim] as small an area as possible.</p> <p>5 But it does not declare where the two</p> <p>6 working faces are.</p> <p>7 Q. So it doesn't say one working face</p> <p>8 of the construction and demolition landfill?</p> <p>9 A. No, sir.</p> <p>10 Q. Does it say, One construction</p> <p>11 face --</p> <p>12 MR. WHITE: Objection. Leading.</p> <p>13 HEARING OFFICER: Overruled.</p> <p>14 BY MR. LUDDER:</p> <p>15 Q. Does it say, One construction face</p> <p>16 at the municipal solid waste landfill?</p> <p>17 A. No, sir.</p> <p>18 MR. LUDDER: Your Honor, if I -- I</p> <p>19 believe I offered P-3 before. Did I?</p> <p>20 HEARING OFFICER: Yes, it's</p> <p>21 admitted.</p> <p>22 MR. LUDDER: Okay. Did we offer</p> <p>23 Exhibit P-5?</p>	<p>1 be able to separate it?</p> <p>2 MR. WHITE: That's what I didn't</p> <p>3 want to do, because I --</p> <p>4 HEARING OFFICER: Well, let me ask</p> <p>5 you this: Are you going to offer the</p> <p>6 entire P-5 at some point?</p> <p>7 MR. WHITE: Yes, sir.</p> <p>8 MR. LUDDER: Let's just reserve it</p> <p>9 for later.</p> <p>10 HEARING OFFICER: Yes, except I'm a</p> <p>11 little bit concerned about how we're</p> <p>12 confusing this record. All of the</p> <p>13 questions that you've asked and</p> <p>14 everybody's asked about that document</p> <p>15 is now labeled something else.</p> <p>16 MR. LUDDER: Right.</p> <p>17 HEARING OFFICER: And that gets</p> <p>18 real confusing when I'm reading this</p> <p>19 record and looking at exhibits.</p> <p>20 MR. LUDDER: Okay.</p> <p>21 HEARING OFFICER: Do you see what I</p> <p>22 mean?</p> <p>23 MR. LUDDER: Yeah. I'll withdraw</p>

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<p>1 it, and we'll -- we'll not offer that 2 one page, but, rather, we'll offer the 3 entire exhibit. 4 HEARING OFFICER: And I believe we 5 have no objection? 6 MR. WHITE: No objection. Correct. 7 MR. CARTER: No objection. 8 HEARING OFFICER: All right. Then, 9 Mr. Ludder, just so I make sure I get 10 the right one, that's P-5, right? 11 MR. LUDDER: Correct. 12 HEARING OFFICER: P-5 is admitted. 13 (Exhibit No. P-5 was admitted 14 into evidence.) 15 MR. LUDDER: No further questions. 16 HEARING OFFICER: Cross from other 17 parties? 18 MR. CARTER: Nothing. 19 HEARING OFFICER: Mr. White? 20 MR. WHITE: Nothing further. 21 HEARING OFFICER: All right. Can 22 Mr. Lewis be excused if he wants to be 23 excused? Okay. Thank you, Mr. Lewis.</p>	<p>1 A. Ten years. 2 Q. Do you own your own home? 3 A. Yes, sir. 4 Q. Is it -- is it at that address? 5 A. Yes, sir. 6 Q. And do you own real estate 7 associated with that home? 8 A. Yes, sir. I own -- I own ten 9 acres next to my family's land. 10 Q. Okay. Did you build your own 11 home? 12 A. Yes, sir. 13 Q. And what year did you build it? 14 A. 2006 is when we completed it. 15 Q. Okay. Let's look at Exhibit P-5, 16 the Boundary Sketch drawing. 17 A. Okay. 18 Q. Are you familiar with where the 19 proposed landfill expansion is on that drawing? 20 A. Yes, sir. The proposed is right 21 here in this green. 22 Q. Speak up so that everybody can 23 hear you.</p>
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<p>1 THE WITNESS: Thank y'all. 2 HEARING OFFICER: All right. It's 3 10:45. We've been going about an hour 4 and 45 minutes. Let's take 15 5 minutes. 6 (A brief recess was taken.) 7 MR. LUDDER: The Petitioners call 8 Michael Del Vecchio. 9 (The Witness was duly sworn.) 10 DIRECT EXAMINATION 11 BY MR. LUDDER: 12 Q. Would you please state your name? 13 A. Michael Del Vecchio. 14 Q. And are you one of the Petitioners 15 in this case? 16 A. Yes, sir. 17 Q. And what's your current 18 residential address? 19 A. 151 Del Vecchio Lane, Dothan 20 Alabama, 36 -- 21 Q. How long -- 22 A. -- 36303. 23 Q. How long have you lived there?</p>	<p>1 A. Proposed is this green area right 2 here. 3 Q. Okay. And are you familiar with 4 where the existing landfill, that's the landfill 5 that's been in operation for the last -- 6 A. It's in this pink area. 7 Q. Let me finish my questions before 8 you answer. 9 A. Okay. 10 Q. So it's in the pink area? 11 A. Yes, sir. 12 Q. That's the existing landfill 13 that's been in operation for a number of years? 14 A. Yes, sir. 15 Q. Has it -- has the existing 16 landfill been in operation the entire ten years 17 that you have been at your house? 18 A. Yes, it has. 19 Q. Okay. Can you identify on the 20 Boundary Sketch, Exhibit P-5, where your 21 property is? 22 A. Yes, I can. 23 Q. Would you do that?</p>

<p style="text-align: right;">Page 113</p> <p>1 A. This corner of the proposed site 2 touches the corner of my property. 3 Q. When you say "this corner," can 4 you describe where "this" is? 5 A. The southwest corner touches my 6 northeast corner of my property. 7 Q. Okay. 8 A. And this land is family land. My 9 parents and my sister own it, and myself. And 10 then this, if you come from this corner, the 11 south is the boundary of one side of my 12 property, and then I have ten acres. It's a 13 strip right here. It's from the -- it would be 14 the southwest -- southwest of this point, this 15 corner. 16 Q. So your ten acres is a narrow 17 rectangle? 18 A. Yes, sir. 19 Q. Going from north to south? 20 A. Yes, sir, north to south. Yes. 21 Q. And the corner of your property 22 abuts the -- what's shown as a white line in 23 here as the facility boundary?</p>	<p style="text-align: right;">Page 115</p> <p>1 A. All right. 2 Q. So your house is actually off this 3 page? 4 A. Yes, sir. 5 Q. Okay. How far off in terms of 6 miles or how -- 7 A. It's within feet. It's -- my 8 house is 950 feet from that corner, from the 9 proposed site. 10 Q. Okay. Good. And would you put 11 your initials next to that arrow? Thank you. 12 That's MDD, correct? 13 A. Yes, it is. 14 Q. Thank you. To your knowledge, is 15 the landfill expansion, which is shown on P-5 in 16 that teal color, is that in operation now? 17 A. No, sir. It's not in operation 18 now. 19 Q. Have you -- are you close enough 20 to observe activity on that -- 21 A. Yes, I am. 22 Q. -- site? 23 A. Yes, I am.</p>
<p style="text-align: right;">Page 114</p> <p>1 A. Yes, it does. 2 Q. Okay. Is your -- is your house 3 shown on this map? 4 A. No. It would be right off the 5 page, my house would be. 6 Q. Off the lower part of the page? 7 A. Off of this page. 8 Q. Off the lower part of the page? 9 A. Yes, sir. Off the lower part of 10 page. 11 Q. Okay. Why don't you just draw an 12 arrow directly -- going towards your house 13 from -- from the corner of the landfill 14 boundary? 15 A. Okay. 16 Q. And let's extend the arrow 17 to -- off the -- 18 A. Off the page? 19 Q. -- off the page where your house 20 would be. 21 A. Okay. 22 Q. And put an arrow at the end of 23 that, please.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Have you observed any activity 2 there? 3 A. Yes, there has been activity on 4 that site. 5 Q. And can you describe what kind of 6 activity you've seen? 7 A. There has been equipment on that 8 site to move trees and to clear a path for the 9 powerline, and the powerline's been moved. 10 Where it used to go straight through the 11 landfill expansion, now it comes down to the 12 bottom of the expansion, the south part of the 13 expansion, and it makes a box and goes around. 14 Q. Okay. Have you seen any waste 15 disposal activity there? 16 A. I have not. 17 Q. Okay. Do you know if the existing 18 landfill, which is the pink area on P-5, is 19 currently receiving waste? 20 A. I occasionally hear equipment. 21 Not like it used to be, but I do hear equipment 22 occasionally, backup alarms and tractors. 23 Q. So you -- back to the question, do</p>

<p style="text-align: right;">Page 117</p> <p>1 you know or do you -- do you know if there's any 2 waste disposal occurring? 3 A. I do not know if there's any 4 waste, no. 5 Q. Okay. Do you have an 6 understanding of whether waste disposal -- or 7 whether that existing landfill is currently 8 authorized to receive waste? 9 A. I have heard this from the media 10 and the news and from newspapers that it's 11 supposed to be closed or in the process of being 12 closed, and they're shipping the waste to 13 another place in Florida, is what I heard. 14 Q. Okay. And you say that the 15 existing landfill was in operation during the 16 ten years that you owned your property. Do you 17 know when -- when the City began shipping waste 18 to Florida? 19 A. I believe it was the end of last 20 year. 21 Q. During the ten years that you have 22 owned your property, have you had any effects 23 that you attribute to the land -- to the</p>	<p style="text-align: right;">Page 119</p> <p>1 outside. And it wasn't a matter of maybe 30 or 2 45 minutes I've had them come back in, and I'd 3 say, Why don't you guys go out and play? You 4 know, you've had enough on the electronics 5 today. 6 And they would say, Dad, it smells too bad. 7 And I would say, Okay, let me go out. 8 And I'd go outside, and I'd say, Yes, it's 9 time to go in today. Come in, and we'll do 10 something else. 11 That's had to -- that's had to happen 12 several times. We have a fourwheeler. They 13 love to drive the fourwheeler, but there are 14 times -- we have horses. They love to spend 15 time with the -- with the -- we also have cows. 16 They love to spend time outside, but when the 17 odor's too strong, or when the dust, if it's 18 dry -- it's been dry for a while, the dust, it 19 blows off the top of that landfill when it comes 20 in, that's a problem too. 21 Q. All right. You mentioned -- well, 22 do you keep your windows open during cool days? 23 A. We would love to, but we can't,</p>
<p style="text-align: right;">Page 118</p> <p>1 existing landfill? 2 A. Yes, sir. 3 Q. What would those be? 4 A. We have had odor, we have had 5 dust, we have had coyotes, we have had buzzards, 6 we have had mosquitoes -- well, I know everybody 7 has mosquitoes, but an increased amount of 8 mosquitoes, and an increased amount of flies. 9 Q. All right. Let's discuss the 10 odor. What kind of issue have you had with 11 odor? 12 A. We have -- because I'm south of 13 it -- whenever we have a north wind or a 14 northwest wind, the odor is strong. I'm only 15 900 feet from the proposed landfill, and I'm not 16 that much further from the existing landfill. 17 And when the -- when the winds blow, and even 18 when it's stagnant, when there's not wind, but 19 it's just -- it lingers. During the day, the 20 odors can be very strong. I've got four girls, 21 ages 19, 16, 13, and 10. The youngest is 10. 22 There's times that we have a beautiful day as 23 far as the sunshine, and I'd tell them to go</p>	<p style="text-align: right;">Page 120</p> <p>1 no. I also have two porches. When we built the 2 house -- we live on a farm. I -- I wanted a 3 front porch and a back porch so I could enjoy 4 outside, and there are times -- there are times 5 that we can't sit on the porches. 6 Q. Do you have outdoor barbecues at 7 your house? 8 A. Yes, sir. We've had barbecues. I 9 also have people over, friends of ours. And I 10 would say during the day it's strong, but the 11 nights -- at night it seemed to be stronger. 12 You have people over, and you really -- I've had 13 people -- I have friends that go to church with 14 me that come over, and they say, What is that 15 smell? 16 You know, and it's an embarrassing thing. 17 And I have to say it's the landfill. 18 Q. Does that air -- does the smell of 19 the air interfere with your ability to entertain 20 and have outdoor barbecues? 21 A. Well, we would have to 22 keep -- if -- on those days, some are stronger 23 than others. I mean, that's honest.</p>

<p style="text-align: right;">Page 121</p> <p>1 Some -- some days are stronger than others.</p> <p>2 When the days -- if I have a south wind, do I</p> <p>3 smell the landfill? Usually not. And that</p> <p>4 would be a day we could be outside. If I have a</p> <p>5 north wind, today, you're not outside. Let's</p> <p>6 just be honest.</p> <p>7 Q. Okay. And what about birds? Do</p> <p>8 you have an issue with birds?</p> <p>9 A. We've had a lot of buzzards. In</p> <p>10 fact, my girls have gone outside, and we've had</p> <p>11 so many circling the farm, and they have</p> <p>12 asked -- of course, Kristen, my youngest one,</p> <p>13 says, What kind of birds are those? Are those</p> <p>14 hawks?</p> <p>15 And I said, No, those are buzzards.</p> <p>16 As my neighbor does, I enjoy hunting on our</p> <p>17 property, and I remember sitting outside on our</p> <p>18 back property. We have deer on our property. I</p> <p>19 remember sitting in front of an old oak tree</p> <p>20 that had died, and I remember counting 31</p> <p>21 buzzards in one tree one morning. And the</p> <p>22 reason I was counting them, I had never seen</p> <p>23 that many birds in a tree. And, of course,</p>	<p style="text-align: right;">Page 123</p> <p>1 location, have the number of buzzards changed?</p> <p>2 A. They are less. You know, we live</p> <p>3 in Alabama, there's always buzzards, but there</p> <p>4 is a decreased number, yes. Much -- much</p> <p>5 decreased.</p> <p>6 Q. Okay. You mentioned flies. What</p> <p>7 kind of a fly issue have you had?</p> <p>8 A. We have had a lot of flies that</p> <p>9 come into our garage, around the doors of the</p> <p>10 house, on our cars. I don't know why they</p> <p>11 like -- they like cars, but they're all over the</p> <p>12 cars. And then, of course, they make their</p> <p>13 way -- when you come in the doors, they make</p> <p>14 their way inside, and then we have to, you</p> <p>15 know -- then we go around the house trying to</p> <p>16 kill them.</p> <p>17 Q. Okay. Now, you mentioned dust as</p> <p>18 well. Have you ever seen dust come in from the</p> <p>19 landfill direction, existing landfill direction?</p> <p>20 A. Yes. If we have a north wind, and</p> <p>21 it's been dry, and we've had some dry at times,</p> <p>22 especially during the summers, you can actually</p> <p>23 look out -- you can walk to my property line.</p>
<p style="text-align: right;">Page 122</p> <p>1 there were many others circling that weren't in</p> <p>2 the tree.</p> <p>3 Q. Okay. Have -- have -- well, where</p> <p>4 do the buzzards deposit their waste?</p> <p>5 A. Probably all over the property.</p> <p>6 I've got the girls -- when the girls were able</p> <p>7 to get outside, you have buzzards that are</p> <p>8 flying all over the property, coming to and from</p> <p>9 the landfill. I'm sure they're eating things</p> <p>10 that we don't want to discuss, but they're</p> <p>11 depositing their waste on our property, and my</p> <p>12 kids are out there on our property.</p> <p>13 Q. Okay. Now, going back to the</p> <p>14 odors, since October of 2015, when the existing</p> <p>15 landfill has slowed or eliminated its deposit of</p> <p>16 waste, has there been a change in the odor on</p> <p>17 your property?</p> <p>18 A. This year is much better, yes.</p> <p>19 Q. Substantially better?</p> <p>20 A. Substantially better.</p> <p>21 Q. Okay. And since October of 2015,</p> <p>22 when the existing landfill has slowed or</p> <p>23 eliminated the deposit of waste at that</p>	<p style="text-align: right;">Page 124</p> <p>1 And, actually, you can walk next to my house and</p> <p>2 look at the top of the -- we call it</p> <p>3 "the dump" -- call it the "landfill" -- and see</p> <p>4 the dust coming off. And the field next to me,</p> <p>5 which is my parents' land, it's our family land,</p> <p>6 it will come across there where our cows are,</p> <p>7 and you can see. It'll be like a fog. When the</p> <p>8 wind is north -- we have a north wind that's</p> <p>9 blowing our way, and it has been dry, yes.</p> <p>10 Q. Okay. Have you had any issue with</p> <p>11 noise from the landfill?</p> <p>12 A. Yes, yes. We have backup alarms.</p> <p>13 They start very early in the morning. You know,</p> <p>14 we've had the slamming of the dump trucks, the</p> <p>15 tractors, and the equipment they use on the</p> <p>16 landfill.</p> <p>17 Q. And since October of 2015, when</p> <p>18 the existing landfill has slowed or stopped</p> <p>19 taking waste, have you noticed any change in the</p> <p>20 noise?</p> <p>21 A. It's much less. Occasionally,</p> <p>22 I'll hear -- like I said</p> <p>23 earlier -- occasionally, I'll hear a couple</p>

<p style="text-align: right;">Page 125</p> <p>1 trucks up there and, occasionally, I'll hear a 2 couple tractors, but none of the -- not like I 3 used to hear. 4 Q. And since October of 2015, when 5 you think waste disposed in the existing 6 landfill has slowed or been eliminated, have you 7 seen any change in the dust? 8 A. I haven't seen as much dust, no. 9 Q. Not as much change in that? So 10 you still see dust coming from that direction? 11 A. Very rarely. 12 Q. Oh, very rarely? 13 A. But occasionally. 14 Q. So you say you haven't seen much 15 dust since then? 16 A. Since then. The trucks and the 17 tractors running up on top of the 18 mounds -- which I can see the mound -- they stir 19 up the dust, and then the wind blows the dust. 20 So if the trucks and the tractors aren't there, 21 it's not as bad. There's not as much dust. 22 Q. And so are you saying that since 23 October, it's not been as bad?</p>	<p style="text-align: right;">Page 127</p> <p>1 with them. If it's in the front of our property 2 it's not so bad, because it's more cleared. In 3 the back of our property it's wooded, and I 4 prefer -- I tell them, I prefer you not to be 5 out there. 6 Q. And the back of your property is 7 referring to north or south? 8 A. The north. North would be closer 9 to the landfill. 10 Q. Okay. And when you say that 11 you -- I think you said you found the calf. Did 12 you find the carcass of the calf? 13 A. No, we didn't find the calf. We 14 found where she had had the calf, and there was 15 no calf. And we searched the whole field, which 16 is about eight or nine acres, maybe ten acres, 17 and we found no calf. We rode around. We had 18 everybody out there looking for the calf, and we 19 never found the calf. 20 Q. Okay. And since October of 2015 21 when the existing landfill has substantially 22 reduced the acceptance of waste or eliminated 23 acceptance of waste, has the coyote problem</p>
<p style="text-align: right;">Page 126</p> <p>1 A. No. It has not been as bad. 2 Q. Have you had any issue with 3 coyotes? 4 A. Yes. We have a lot of coyotes. 5 You hear them at night. I've got a game camera 6 that I put up behind my house, and I've caught 7 pictures of them in the daytime. My dad and I 8 raise Angus cows. And two years ago, we heard 9 the coyotes one night, and it was during the 10 time when our cows were calving, and one of our 11 cows calved, and you could see that she had a 12 calf from the afterbirth that was still there, 13 hanging from her. And we went looking for the 14 calf, and the calf was not to be found. And we 15 had found an area in the back of our property 16 where we think the coyotes got our calf. And 17 since then, since that time, and also the game 18 camera pictures I've had of coyotes in the last 19 few years, I'm very concerned with my girls 20 being outside with coyotes, especially if 21 there's a pack. So I tell the girls, when they 22 go outside, if they have an opportunity to go 23 outside, you know, to go together or let me go</p>	<p style="text-align: right;">Page 128</p> <p>1 changed? 2 A. I don't hear them as much anymore. 3 Q. Are there any other adverse 4 effects that are not -- I withdraw that. 5 Are there any other effects that you 6 attribute to the landfill? 7 A. I think the mosquito problem has 8 been increased since they moved the powerline. 9 Because when they moved the powerline, they also 10 moved the earth and moved some trees. And at 11 the corner of my property, the corner that 12 touches their corner, there is a place in the 13 back of my property where the water flows 14 through. And it was created there, I guess, 15 many, many years ago for the water to go through 16 my property onto the City's property and flow 17 through their property to Golf Creek. And Golf 18 Creek is in -- if you look at the history of 19 Dothan, Golf Creek is mentioned in the history 20 of Dothan, and it feeds into the Golf Creek. 21 Since they've moved the powerline and moved the 22 earth, there's no creekbed there anymore for 23 that stream to flow into the -- that small</p>

<p style="text-align: right;">Page 129</p> <p>1 stream to flow into Golf Creek. And it's 2 pooling up in that corner, causing, I would say, 3 a breeding place for mosquitoes. 4 Q. And is that pooling occurring on 5 your property? 6 A. On my property and on their 7 property, because I can see their property from 8 my property. When I walk out to the corner of 9 my property, which is also my parents' property, 10 the far corner -- all our corners meet. My 11 parents -- our family land -- my land and their 12 land. I can see that there is a stagnant pool 13 of water there, and on our property and their 14 property. 15 Q. And from your property, do you 16 have the ability to view activities where 17 they -- where they occurred on the existing 18 landfill? 19 A. I can see -- I can see the 20 landfill, yes. I can see the existing -- I can 21 see the top of it. 22 Q. And you could see the machinery 23 operating there?</p>	<p style="text-align: right;">Page 131</p> <p>1 A. Three and a half. 2 Q. And that's all new construction? 3 A. Yes, sir. Ten years. 4 Q. And is there anything -- any 5 conditions on your property that you feel 6 detract from its value? 7 A. The odor, the dust, and the 8 coyotes, the varmint -- the vermin. 9 Q. And would you include in that -- 10 A. The sound, I also include the 11 sound. 12 Q. The sound, you said? 13 A. The sound of the trucks and the 14 tractors from the previous years, yes, sir. 15 Q. Okay. 16 A. And if it -- if it gets closer, 17 the sound will be increased, and the proposed 18 site is going to be closer. 19 MR. LUDDER: All right. Your 20 Honor, I'd like to -- he speaks 21 softly. 22 THE WITNESS: I'm sorry. 23 MR. LUDDER: No, that's okay. I</p>
<p style="text-align: right;">Page 130</p> <p>1 A. Uh-huh (affirmative response). 2 Q. When it does? 3 A. I can see people walking on top of 4 it. Yes, sir. 5 Q. Have you formed an opinion as to 6 the value of your property? 7 A. Yes, sir. I think it's worth 8 about 300,000. 9 HEARING OFFICER: Worth about 10 200,000? 11 THE WITNESS: 300,000. 12 HEARING OFFICER: Two? 13 THE WITNESS: Three. 14 HEARING OFFICER: Three? 15 THE WITNESS: 300,000. My 16 house -- my ten acres and my house. 17 BY MR. LUDDER: 18 Q. And do you have any idea what size 19 your house is? 20 A. It's 3400 square feet. 21 Q. And how many bedrooms? 22 A. Four. 23 Q. Bathrooms?</p>	<p style="text-align: right;">Page 132</p> <p>1 just want to make sure the court 2 reporter -- 3 THE WITNESS: Can you hear me? 4 COURT REPORTER: Yes. 5 BY MR. LUDDER: 6 Q. All right. Now, the proposed 7 landfill expansion is to the south of the 8 existing landfill? 9 A. Yes, sir. 10 Q. If it operates the same way as the 11 existing landfill operated, do you expect to 12 have any kinds of effects from it? 13 A. Everything that I have mentioned 14 before -- the dust, the sound, the coyotes, the 15 buzzards, everything, the adverse 16 effects -- will be closer to me. It will be 17 worse, yes, sir. 18 Q. You said it will be worse? 19 A. It will be worse. 20 Q. Okay. 21 A. Because it's closer. 22 Q. Do you have any idea how long the 23 proposed landfill is expected to operate?</p>

<p style="text-align: right;">Page 133</p> <p>1 A. From what -- from what I've heard 2 and what I've read, they say 20 years. 3 Q. Okay. And when you purchased your 4 property or acquired your property ten years 5 ago, did you have any understanding at that time 6 that the landfill would continue to operate? 7 A. When I purchased the ten acres 8 next to my family's land -- and they owned 44 9 next to mine -- I knew the landfill was back 10 there, because I was raised on the land my 11 parents owned. We moved there when I was 16. 12 I'm 46 today -- 46 in March. I knew the 13 landfill was there. But I also knew the life of 14 the landfill was coming to an end. And so I 15 purchased the land next to my parents' 16 land -- next to my family's land with the 17 thought, and from what everyone had said and 18 told me, that once that landfill was filled, and 19 it was completed, and it was closed, that it 20 would not be a landfill anymore, and they would 21 move it away. They would go somewhere else for 22 the next landfill. I did not realize they were 23 going to buy the land around it and acquire the</p>	<p style="text-align: right;">Page 135</p> <p>1 should be revised so as to prohibit the landfill 2 being located where those wetlands and streams 3 are, how, if at all, would that benefit you? 4 A. Well, if they're not allowed to 5 place the expansion, the landfill expansion, on 6 this wetland, that it would decrease the 7 landfill by about -- by about half. And it 8 would also decrease the life of the expansion by 9 about half. I know the wetlands that go through 10 this expansion, they want to place the landfill 11 on top of this wetland. And I'm already having 12 water issues just from what they've done with 13 the powerline. I can only see it getting worse, 14 and -- does that answer your question? 15 Q. You -- partially. 16 A. Okay. 17 Q. You described how it might reduce 18 the size of the landfill. How would that 19 benefit you -- 20 A. If they're not allowed -- if 21 they're not allowed to place the landfill on 22 that wetland, it would benefit me by having a 23 smaller landfill and less life of the landfill.</p>
<p style="text-align: right;">Page 134</p> <p>1 land around it to expand it. If I would have 2 known that, then I would have made a different 3 decision on buying the land that I live on now. 4 Q. All right. Are you aware that the 5 request for hearing in this case made certain 6 requests that the Environmental Management 7 Commission revise the permit? 8 A. Yes. 9 Q. And are you aware that -- are you 10 aware that the -- I withdraw the question. 11 If the Environmental -- I withdraw the 12 question. 13 Are you aware, generally, that there are 14 wetlands and streams -- or stream segments in 15 the area of the proposed landfill expansion? 16 A. Yes, I am aware of the wetlands. 17 Q. And are you aware that the request 18 for hearing that was filed on your behalf asked 19 that the landfill not be located where those 20 wetlands and streams are? 21 A. Yes. 22 Q. And if the Environmental 23 Management Commission decides that the permit</p>	<p style="text-align: right;">Page 136</p> <p>1 Also, it would not bring it so close to me if 2 they were not allowed to go on the wetland. 3 Q. All right. And by a shorter life 4 of the landfill, how does that benefit you? 5 A. It wouldn't be there as long. If 6 they're saying that the proposed landfill is 20 7 years, if they're not allowed to go into the 8 wetland, it may -- I'm not -- I'm not a -- I 9 don't know, but it would -- it would decrease it 10 by many -- it would decreasing the years that it 11 was there and benefit me by not being there as 12 long. 13 Q. Well, would you have any -- would 14 you have a shorter duration of adverse effects? 15 A. Yes. 16 Q. Now, are you aware that the 17 request for hearing in this case, filed on your 18 behalf, requested a modification of the permit 19 to prohibit alternative covers? 20 A. Yes. 21 Q. And if the Commission decides that 22 the -- that that revision should occur so as to 23 prohibit alternative covers, how would that</p>

<p style="text-align: right;">Page 137</p> <p>1 benefit you?</p> <p>2 A. Well, I'm not sure about their</p> <p>3 alternative covers, but I know if they were to</p> <p>4 place dirt on it, as they should, and if they</p> <p>5 did it properly, I know it probably -- I'm</p> <p>6 hoping, hopefully, it would decrease the odor.</p> <p>7 I will tell you this, At night, it's the worst</p> <p>8 when this is in operation, which means to me,</p> <p>9 that it's not covered properly every night. And</p> <p>10 if they're supposed to cover it with six inches</p> <p>11 of dirt, it's not much. I'm -- I'm just -- if</p> <p>12 they were to cover it with something else, we</p> <p>13 have -- we have coyotes and other things that</p> <p>14 could get up under it, the buzzards. Even the</p> <p>15 dirt, I don't know if it's covered properly.</p> <p>16 That's just to be honest with you.</p> <p>17 Q. Okay. Are you aware that the</p> <p>18 request for hearing has asked the Commission to</p> <p>19 revise the permit to change the slope of final</p> <p>20 cover?</p> <p>21 A. Yes.</p> <p>22 Q. And do you know what the permit</p> <p>23 says about final cover slope now?</p>	<p style="text-align: right;">Page 139</p> <p>1 request for hearing opposed the granting of a</p> <p>2 variance allowing two working faces?</p> <p>3 A. Yes.</p> <p>4 Q. If the Commission was to change</p> <p>5 the permit to deny that variance and allow only</p> <p>6 one working face, how would that benefit you?</p> <p>7 A. Well, it would be less surface</p> <p>8 area for the garbage. I know the permit says</p> <p>9 two working faces, and from what we heard</p> <p>10 earlier, they're talking about one working face</p> <p>11 on one, and one on the other in two different</p> <p>12 places. But it doesn't say anything in</p> <p>13 the -- in the -- in what is proposed that they</p> <p>14 couldn't take that and put two working faces on</p> <p>15 one area. And if they did that behind my house,</p> <p>16 of course, we'd have two surface areas instead</p> <p>17 of one surface area.</p> <p>18 Q. All right. Do you recall ever</p> <p>19 receiving a written notice from ADEM about this</p> <p>20 proposed permit?</p> <p>21 A. I don't -- I don't remember</p> <p>22 anything from ADEM. No, sir.</p> <p>23 Q. And you previously testified that</p>
<p style="text-align: right;">Page 138</p> <p>1 A. What it says now? Or what it --</p> <p>2 Q. What it -- what's proposed for the</p> <p>3 landfill.</p> <p>4 A. Proposed is -- proposed would be</p> <p>5 three to one. Three foot out, one foot high.</p> <p>6 And, usually, I know from the past, it's</p> <p>7 supposed to be four to one. Which would</p> <p>8 be -- three to one would be steeper. Four to</p> <p>9 one would be not so steep.</p> <p>10 Q. All right. And if the Commission</p> <p>11 was to direct that the permit be changed to a</p> <p>12 four-to-one slope, how would that benefit you?</p> <p>13 A. Well, it wouldn't be as steep.</p> <p>14 There wouldn't be as much erosion. Erosion</p> <p>15 would cause -- over time, especially with years</p> <p>16 and a lot of rain, you know, erosion would cause</p> <p>17 the garbage to be exposed. It would cause, you</p> <p>18 know, the odor, and also the coyotes and the</p> <p>19 buzzards. Four to one would be less slope and</p> <p>20 less erosion, and it would benefit me by not</p> <p>21 having this much of the odor, hopefully, and the</p> <p>22 coyotes and the buzzards.</p> <p>23 Q. Okay. Are you aware that the</p>	<p style="text-align: right;">Page 140</p> <p>1 your property joins the property of the City?</p> <p>2 A. Yes, sir.</p> <p>3 Q. What's your occupation?</p> <p>4 A. I work for UPS, the United Parcel</p> <p>5 Service.</p> <p>6 Q. All right. Do you do any kind of</p> <p>7 volunteer work anywhere?</p> <p>8 A. Yes, sir. I'm also a youth pastor</p> <p>9 at our church.</p> <p>10 Q. You're a youth pastor at your</p> <p>11 church?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And how long have you worked at</p> <p>14 UPS?</p> <p>15 A. 26 years.</p> <p>16 MR. LUDDER: Okay. That's all I</p> <p>17 have, Your Honor.</p> <p>18 HEARING OFFICER: Cross?</p> <p>19 MR. CARTER: Yes, Your Honor, thank</p> <p>20 you.</p> <p>21 CROSS-EXAMINATION</p> <p>22 BY MR. CARTER:</p> <p>23 Q. Mr. Del Vecchio, I'm Todd Carter,</p>

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<p>1 and I represent the Department.</p> <p>2 A. Yes, sir.</p> <p>3 Q. I've just got a few questions for</p> <p>4 you. Now, you said y'all have lived at your</p> <p>5 residence out there for ten years; is that</p> <p>6 right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And it was built in 2006; is that</p> <p>9 correct?</p> <p>10 A. (The Witness nodded).</p> <p>11 Q. But you also made reference to</p> <p>12 your family's property. You said you got</p> <p>13 40 -- 44 acres that are the family's property;</p> <p>14 is that right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And now are -- is all that</p> <p>17 adjoining? I think you made reference --</p> <p>18 A. Yes, sir. This is my property.</p> <p>19 My property comes up to the corner. It comes</p> <p>20 down. All this here is my family's property.</p> <p>21 Q. Okay. This is -- you made</p> <p>22 reference of a farm?</p> <p>23 A. Our cattle are here, and our</p>	<p>1 either side of the creek.</p> <p>2 Q. Okay. How long has your family</p> <p>3 owned that property out there?</p> <p>4 A. 30 years. I moved there when I</p> <p>5 was 16. I'm 46.</p> <p>6 Q. Okay. And you may have answered,</p> <p>7 but the landfill was there when you</p> <p>8 moved -- when y'all originally moved out there?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And that's the -- the one</p> <p>11 that's existing now or the closed landfill?</p> <p>12 A. That's the pink landfill.</p> <p>13 Q. Okay. So the existing landfill?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, you mentioned at one</p> <p>16 point, you said, I think, from that southwest</p> <p>17 corner to your home is 950 feet?</p> <p>18 A. Yes, sir.</p> <p>19 Q. How'd you come up with 950 feet?</p> <p>20 Help me.</p> <p>21 A. GPS.</p> <p>22 Q. Okay.</p> <p>23 A. We just kind of looked at it.</p>
Page 142	Page 144
<p>1 cattle are here when we move them from field to</p> <p>2 field. My parents live here, and my sister</p> <p>3 lives here. I live here.</p> <p>4 Q. Okay.</p> <p>5 A. This is all family land up</p> <p>6 to -- I'm not sure exactly where the barrier is,</p> <p>7 but that's my family's land, 44 acres. That's</p> <p>8 our field we have hay on, and, of course, we</p> <p>9 often make cows hay, Angus cows. That's my</p> <p>10 family land, and this is my land.</p> <p>11 Q. So when you referenced the "farm,"</p> <p>12 that's what you're referring to?</p> <p>13 A. Yes.</p> <p>14 Q. The 44 acres?</p> <p>15 A. Yes.</p> <p>16 Q. And that's where the cows -- and I</p> <p>17 think you said horses -- you have horses too?</p> <p>18 A. Yes, we have horses.</p> <p>19 Q. Okay. Are they in the same area</p> <p>20 with the cows?</p> <p>21 A. Yes, sir, they're with the cows.</p> <p>22 Q. Okay.</p> <p>23 A. We also have two barns, a barn on</p>	<p>1 Q. Okay. Did y'all have -- not like</p> <p>2 a survey or anything?</p> <p>3 A. No, sir.</p> <p>4 Q. Okay.</p> <p>5 A. I mean, you can GPS it and then</p> <p>6 kind of get the scale and kind of estimate it.</p> <p>7 And pretty much, the scale's pretty -- pretty</p> <p>8 accurate.</p> <p>9 Q. Okay. Now, at one point, you</p> <p>10 said, Not like it used to be, when you were</p> <p>11 referencing, I guess, the impacts. So am I to</p> <p>12 take it from your testimony that now -- it used</p> <p>13 to be worse?</p> <p>14 A. When this is -- when this was in</p> <p>15 full operation, it was bad. And since this</p> <p>16 year, when they haven't done much on it,</p> <p>17 it's -- it's reduced. All the odors reduced,</p> <p>18 the dust reduced, the noise is reduced,</p> <p>19 everything is reduced.</p> <p>20 Q. Okay. So and you -- basically,</p> <p>21 the way it's being operated right now, you</p> <p>22 really wouldn't have that big of a problem with</p> <p>23 it?</p>

<p style="text-align: right;">Page 145</p> <p>1 A. I don't think they're doing much 2 on it. 3 Q. Okay. 4 A. I don't think they're putting 5 anything on it that I know of. 6 Q. Okay. And now -- and then I think 7 from Mr. Ludder's testimony when -- well, those 8 questions he'd asked you, on this -- for the 9 modifications, that have been requested in the 10 request for hearing, to the permit, are you 11 saying those -- if those were granted by the 12 Commission that that would basically solve all 13 the problems out there? 14 A. I would like for this not to be 15 expanded at all. 16 Q. So if they granted change to the 17 slope or the two working faces, that that's 18 going to solve the problems of the buzzards and 19 the mosquitoes and the -- 20 A. I don't think so, because the 21 landfill -- the existing landfill now is not 22 doing that, and so... 23 Q. Okay. And now you --</p>	<p style="text-align: right;">Page 147</p> <p>1 anything that's steeper. 2 Q. Okay. But as outside -- you're 3 giving me a lay opinion as for that, right? 4 A. Right. 5 Q. You're not a certified engineer or 6 anything? 7 A. No. No, sir. 8 Q. Okay. All right. Now, you have 9 testified you've -- now, you're still -- is it 10 my understanding as towards the outdoors and the 11 barbecues, and the hunting, and all that, you're 12 still able to do that? Is it your 13 testimony -- I mean, or maybe you just testified 14 that you just can't do that anymore? Or -- 15 A. There are days when it's good, 16 I'll be honest with you. There are days when 17 it's -- and I'm supposed to be honest, you know, 18 trustworthy. There are days -- if the wind is 19 right, we're okay. 20 Q. Okay. 21 A. But if you have a lot of days, and 22 the wind's wrong, it's rough. And that's just 23 the honest truth. And, you know, and it could</p>
<p style="text-align: right;">Page 146</p> <p>1 A. I don't -- I don't want this to be 2 expanded at all, but if it's overruled -- if 3 what we're doing is overruled, I would want it 4 to lessen the effect on me and my family. 5 Q. Well, I know you had testified 6 that you had some current concerns, I think, 7 when y'all were talking about the slope and 8 about the erosion and things. 9 Have you reviewed the permit, the proposed 10 permit, or the active -- the permit? 11 A. I've seen some of it, yes, sir. 12 Q. Okay. And you're aware that 13 there's erosion controls that are required by 14 the Department? 15 MR. LUDDER: Objection. Assumes 16 facts not in evidence. 17 HEARING OFFICER: Overruled. 18 BY MR. CARTER: 19 Q. So if you have reviewed the 20 permit, have you seen erosion controls in the 21 permit? 22 A. Yeah, but I think if it's steeper, 23 you would automatically have more erosion,</p>	<p style="text-align: right;">Page 148</p> <p>1 be hit or miss on a lot of that. Now, the 2 sound, you're going to hear the sound every day. 3 It doesn't matter what the wind does. 4 Q. Now, let's see. All right. 5 Where -- you mentioned the part about the 6 buzzards, when you were out hunting and looking 7 up and seeing them. 8 A. Uh-huh (affirmative response). 9 Q. Where was that? 10 A. It was on my family's land. 11 Q. Okay. So it wasn't over near the 12 landfill or the proposed expansion but -- 13 A. No, it was right in here -- right 14 here, which would be south of the landfill. 15 Right here. 16 Q. Okay. 17 A. That's where the creek runs 18 through. 19 Q. All right. So the tree -- I mean, 20 the tree wasn't on the landfill property? It 21 was -- 22 A. No, it was on our property. 23 Q. Okay.</p>

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<p>1 A. It was right here on the border.</p> <p>2 There's a dead tree right on the border of our</p> <p>3 property, almost right on the property line.</p> <p>4 Q. Okay. Now, you said there's less</p> <p>5 activity out there now on the closed</p> <p>6 landfill -- or excuse me, not on the closed</p> <p>7 landfill but on the -- on the pink -- yeah, the</p> <p>8 pink area. That may be easier to say the "pink</p> <p>9 area" there.</p> <p>10 Now -- but you're still saying on days</p> <p>11 though, on certain days, there's still an odor?</p> <p>12 Even though --</p> <p>13 A. Occasionally. They've got PVC</p> <p>14 pipes that come up out of the ground, and</p> <p>15 methane comes out of them, and, occasionally,</p> <p>16 you'll smell that.</p> <p>17 Q. Okay. So that's what you're</p> <p>18 smelling is methane?</p> <p>19 A. I guess. It smells like a septic</p> <p>20 tank or sewer, yeah.</p> <p>21 Q. Okay. Now, you talked about you</p> <p>22 had some concerns what -- where they moved the</p> <p>23 powerlines, so there's wetlands down on that one</p>	<p>1 A. Okay?</p> <p>2 Q. Okay. I see -- that's the big</p> <p>3 parking lot right there?</p> <p>4 A. Right, uh-huh. And this part</p> <p>5 of it -- and there's a neighbor right here too.</p> <p>6 Q. I mean, what is -- if you know, I</p> <p>7 mean, what is Wiregrass Rehabilitaion? Is it a</p> <p>8 hospital or something?</p> <p>9 A. People that come to be</p> <p>10 rehabilitated, they let them work there. It's</p> <p>11 like a -- you know, that are --</p> <p>12 Q. Is it an industry?</p> <p>13 A. They're challenged, they work</p> <p>14 there, yeah. It's like an industry.</p> <p>15 Q. Okay. So that's -- you're saying</p> <p>16 that wetland kind of flows from that area?</p> <p>17 A. It flows off there, yeah. And it</p> <p>18 flows from there through the back of my</p> <p>19 property -- let's see if you can see it. And it</p> <p>20 used to flow from my corner to their corner on</p> <p>21 through here, onto a main -- a main creek, a</p> <p>22 bigger creek, Golf Creek -- it's called Golf</p> <p>23 Creek. And it flows -- it used to flow through</p>
Page 150	Page 152
<p>1 corner of the property?</p> <p>2 A. The wetlands come right through</p> <p>3 this area here.</p> <p>4 Q. Okay. But where were you talking</p> <p>5 about where you talked about there's water</p> <p>6 backing up that's on both properties?</p> <p>7 A. There's water right here in this</p> <p>8 corner of my property, there's a -- and you</p> <p>9 really can't tell. You can barely see. There's</p> <p>10 something like an indentation in the woods. Can</p> <p>11 you see that from there? And there's an area,</p> <p>12 like a creek bed, where it runs through. It's</p> <p>13 very shallow, but it runs through there. And</p> <p>14 any water that comes from this area up</p> <p>15 here -- of course, there's a lot of parking lots</p> <p>16 and highways, and things like that --</p> <p>17 Q. Yeah, as a matter of fact --</p> <p>18 A. It flows through the back of my</p> <p>19 property.</p> <p>20 Q. What is that area over here?</p> <p>21 A. This is Wiregrass Rehabilitation</p> <p>22 Center.</p> <p>23 Q. Okay.</p>	<p>1 here. Well, from here, where they've taken this</p> <p>2 powerline -- where the powerline -- let's see,</p> <p>3 where's the powerline? The powerline is here,</p> <p>4 okay? That was the original powerline. They've</p> <p>5 taken it, and they've diverted here, and come up</p> <p>6 like this, okay? So this powerline doesn't</p> <p>7 exist anymore. It comes here. And they've</p> <p>8 already taken all these trees out, and all these</p> <p>9 trees out, and they've moved this powerline.</p> <p>10 And when they did that, whatever creekbed was</p> <p>11 there is crushed now. Also over here on my</p> <p>12 dad's property, and he's having flooding issues</p> <p>13 too. But just with what I'm dealing with,</p> <p>14 it's -- the water's pooling up over here on my</p> <p>15 property and on the City's property, and it's</p> <p>16 stagnant where it doesn't flow or has a</p> <p>17 creek -- it doesn't have a creekbed anymore.</p> <p>18 Q. Okay. Now, and you said you can</p> <p>19 see onto the landfill property as well? Where</p> <p>20 are you talking about?</p> <p>21 A. Yeah, because this is our -- this</p> <p>22 is the boundary of our family's land, and I</p> <p>23 can see -- and you can see there's not that many</p>

<p style="text-align: right;">Page 153</p> <p>1 trees right here. But you can -- especially --</p> <p>2 and all these trees have been taken out, so I</p> <p>3 can see all that -- all that property.</p> <p>4 Q. Okay. So it's backing up onto</p> <p>5 their property too? Is that what you're --</p> <p>6 A. Yes. It's pooled here, and it's</p> <p>7 pooled up on my property.</p> <p>8 Q. Okay. And I think you mentioned</p> <p>9 your concern with that was the mosquitoes? Is</p> <p>10 that -- is that -- that correct? I mean, that's</p> <p>11 where --</p> <p>12 A. Yeah, and, you know, they've got</p> <p>13 this big scare with the Zika Virus. And even</p> <p>14 our Dothan paper last week said they had</p> <p>15 a -- had one case of a Zika Virus in Dothan.</p> <p>16 Q. Have you contacted the City and</p> <p>17 proposed they do anything about that?</p> <p>18 A. My dad has talked to the Mayor,</p> <p>19 Mayor Mike Schmitz -- he's a friend of</p> <p>20 ours -- and told him about the water issues here</p> <p>21 and the water issues on my dad's property, and</p> <p>22 nothing's been done. And we've even given</p> <p>23 pictures. We sent pictures to him, and</p>	<p style="text-align: right;">Page 155</p> <p>1 A. Well, when I look at the area of</p> <p>2 the landfill, and what [verbatim] they've</p> <p>3 proposed it, and then where the wetland is, it</p> <p>4 looks like if they weren't allowed to go in this</p> <p>5 wetland, it looked like it would cut it in half</p> <p>6 just from looking at the picture.</p> <p>7 Q. Okay. But even -- but making a</p> <p>8 change to the -- to the modification of the</p> <p>9 permit -- I'll withdraw that.</p> <p>10 But even if all the changes are made that</p> <p>11 have been requested in the request for hearing,</p> <p>12 do you -- I mean, do you necessarily think</p> <p>13 that's going to stop the expansion of the</p> <p>14 landfill?</p> <p>15 A. I would hope so.</p> <p>16 MR. CARTER: Nothing further.</p> <p>17 HEARING OFFICER: Mr. White?</p> <p>18 MR. WHITE: Thank you, Judge.</p> <p>19 CROSS-EXAMINATION</p> <p>20 BY MR. WHITE:</p> <p>21 Q. Mr. Del Vecchio, I'm Len White. I</p> <p>22 represent the City.</p> <p>23 A. Yes, sir.</p>
<p style="text-align: right;">Page 154</p> <p>1 nothing's been done.</p> <p>2 Q. Did y'all propose any kind of</p> <p>3 thing to do?</p> <p>4 A. No, I didn't propose it.</p> <p>5 Q. And y'all didn't propose filling</p> <p>6 it in, or anything like that?</p> <p>7 A. No. We didn't propose anything.</p> <p>8 We just said, We never had this issue, but now</p> <p>9 we do.</p> <p>10 Q. Okay. Now, you've made some</p> <p>11 comments, I guess -- and going back to kind of</p> <p>12 revisions of the permit -- that if -- if they</p> <p>13 aren't allowed to expand the landfill into those</p> <p>14 intermittent streams and wetlands there, that</p> <p>15 that's going to cut that -- basically, cut the</p> <p>16 size in half?</p> <p>17 A. It looks like it from here, yes.</p> <p>18 Q. And now you said that would lead</p> <p>19 to less life for the landfill, which in turn, I</p> <p>20 think, helps you out?</p> <p>21 A. It would be there.</p> <p>22 Q. Okay. Now, is that based on some</p> <p>23 fact, or are you just assuming that?</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. I just want to ask a couple of</p> <p>2 questions to follow up.</p> <p>3 I believe you said you have been there at</p> <p>4 your residence for ten years?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. And that you bought the</p> <p>7 property when?</p> <p>8 A. I bought the property before I</p> <p>9 built the house. I believe I bought the</p> <p>10 property in either '04 or '05. What do you</p> <p>11 have?</p> <p>12 Q. Well --</p> <p>13 A. I've seen that.</p> <p>14 Q. That's what I said. I just want</p> <p>15 to clear a couple things up is all.</p> <p>16 A. That's fine.</p> <p>17 Q. Let me show you what's been marked</p> <p>18 as City or Intervenor Number 3 and ask you if</p> <p>19 this is a copy of your deed.</p> <p>20 A. Okay. Yes, sir.</p> <p>21 Q. Okay. What's the date?</p> <p>22 A. 2002.</p> <p>23 Q. Okay.</p>

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<p>1 A. Yeah.</p> <p>2 Q. And the grantor?</p> <p>3 A. Yes, sir?</p> <p>4 Q. Who is it?</p> <p>5 A. Grantor -- grantor is Espy.</p> <p>6 Q. Okay.</p> <p>7 A. All the Espy family, yes, sir.</p> <p>8 Q. All right. So you did not get</p> <p>9 this from your family?</p> <p>10 A. No, sir. It's from the Espys.</p> <p>11 MR. WHITE: We'd offer City 3.</p> <p>12 MR. LUDDER: No objection.</p> <p>13 HEARING OFFICER: It's admitted.</p> <p>14 (Exhibit No. I-3 was admitted</p> <p>15 into evidence.)</p> <p>16 BY MR. WHITE:</p> <p>17 Q. With regard to the design and your</p> <p>18 complaint regarding the slope of the final</p> <p>19 cover, and I believe you believe that there's</p> <p>20 problems with the steepness of that; is that</p> <p>21 correct?</p> <p>22 A. Okay.</p> <p>23 Q. Okay. And I believe your lawyer</p>	<p>1 Q. Yes.</p> <p>2 A. I don't know.</p> <p>3 Q. You don't know?</p> <p>4 A. I don't know what's on these other</p> <p>5 pages.</p> <p>6 Q. Did the person that sold you that</p> <p>7 property tell you there would not be any more</p> <p>8 landfills?</p> <p>9 A. No.</p> <p>10 Q. Okay. Did you ask the seller?</p> <p>11 A. No.</p> <p>12 Q. Okay. Did your parents tell you</p> <p>13 there would not be any more landfills?</p> <p>14 A. Yes, because those pos -- the</p> <p>15 realtor that they bought it from, also some</p> <p>16 other folks that I worked with -- the</p> <p>17 City -- had told them that there would be no</p> <p>18 more expansion.</p> <p>19 Q. Okay. Is the area designated on</p> <p>20 P-5, the colored map, specifically the area</p> <p>21 shaded in green that -- the corner of which</p> <p>22 abuts your property --</p> <p>23 A. Yes, sir.</p>
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<p>1 objected to there not being facts in evidence to</p> <p>2 reflect what this design entails with regard to</p> <p>3 erosion control. And just for the record, do</p> <p>4 you know whether or not these plans reflect</p> <p>5 terraces on that slope?</p> <p>6 MR. LUDDER: I object to the</p> <p>7 preface of the question. I think he</p> <p>8 mischaracterized the question of the</p> <p>9 lawyer.</p> <p>10 Q. Okay. Do you have any reason to</p> <p>11 dispute that the design that's depicted on</p> <p>12 Petitioner 5 contains erosion control for the</p> <p>13 final slope?</p> <p>14 A. I don't see any, no, sir.</p> <p>15 Q. Okay. You don't have any reason</p> <p>16 to, or you don't see it?</p> <p>17 A. I don't see any terrain</p> <p>18 [verbatim].</p> <p>19 Q. Okay. Do you dispute that there</p> <p>20 is included within the design any control for</p> <p>21 erosion on that slope, three to one?</p> <p>22 A. Are you talking about on all these</p> <p>23 other pages?</p>	<p>1 Q. -- is it in use as a landfill</p> <p>2 now?</p> <p>3 A. Not yet, no, sir.</p> <p>4 Q. Have you had any wetland studies</p> <p>5 done?</p> <p>6 A. No, sir.</p> <p>7 Q. Have you had any property</p> <p>8 appraisals done?</p> <p>9 A. Yes. I had one when I was --</p> <p>10 Q. Since you bought it?</p> <p>11 A. Yes, yes.</p> <p>12 Q. Okay.</p> <p>13 A. I had one, of course, when I</p> <p>14 bought the property, and also one since then.</p> <p>15 When I was --</p> <p>16 Q. Do you have those with you today?</p> <p>17 A. No, sir.</p> <p>18 Q. Okay. Did you make any comments</p> <p>19 with respect to the grounds for your contest?</p> <p>20 A. Comments to who?</p> <p>21 Q. ADEM or the Corps of Engineers?</p> <p>22 A. I haven't talked to ADEM, no, sir.</p> <p>23 Q. Okay. Written comments?</p>

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<p>1 A. No, sir.</p> <p>2 MR. WHITE: Okay. That's all.</p> <p>3 HEARING OFFICER: Redirect?</p> <p>4 REDIRECT EXAMINATION</p> <p>5 BY MR. LUDDER:</p> <p>6 Q. Mr. Del Vecchio, you have</p> <p>7 testified on direct as to how the permit changes</p> <p>8 might benefit you, and you testified on cross</p> <p>9 that you didn't think that the permit changes</p> <p>10 would eliminate all the problems from the</p> <p>11 landfill expansion, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Do you think the permit</p> <p>14 modifications would lessen the problems that</p> <p>15 you've experienced?</p> <p>16 A. Yes, it would lessen them.</p> <p>17 MR. LUDDER: No further questions.</p> <p>18 HEARING OFFICER: Recross?</p> <p>19 MR. WHITE: Just to follow up on</p> <p>20 that, if I may, Your Honor.</p> <p>21 RECROSS EXAMINATION</p> <p>22 BY MR. WHITE:</p> <p>23 Q. If you were successful with this</p>	<p>1 Q. Okay. So my question is: I</p> <p>2 understand that if the entire expansion was</p> <p>3 eliminated, then your hope, you know, or</p> <p>4 relative to that -- but my question is: Do you</p> <p>5 believe that the expansion, as you proposed,</p> <p>6 would eliminate all coyotes?</p> <p>7 A. You're talking about the decreased</p> <p>8 size of it?</p> <p>9 Q. Yes.</p> <p>10 A. It wouldn't decrease them.</p> <p>11 Q. Okay. What about the smell?</p> <p>12 A. No. I would still have the smell.</p> <p>13 Q. And the dust?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And the noise?</p> <p>16 A. Yes, sir. It would be closer.</p> <p>17 Q. Okay.</p> <p>18 MR. WHITE: That's all.</p> <p>19 HEARING OFFICER: Thank you,</p> <p>20 Mr. Del Vecchio.</p> <p>21 THE WITNESS: Thank you, sir.</p> <p>22 HEARING OFFICER: Mr. Ludder, may I</p> <p>23 inquire, do you have another witness,</p>
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<p>1 contest, would all the coyotes go away?</p> <p>2 A. I hope so.</p> <p>3 Q. But I'm asking you, is it your</p> <p>4 belief, not your hope, but that this contest</p> <p>5 would eliminate coyotes in the vicinity of your</p> <p>6 property?</p> <p>7 A. Yes. I haven't them heard them</p> <p>8 this year. It would also eliminate the odor and</p> <p>9 the dust.</p> <p>10 Q. Okay. And you understand that</p> <p>11 this contest would not eliminate the landfill</p> <p>12 operation?</p> <p>13 A. It will -- I'm hoping to eliminate</p> <p>14 the expansion.</p> <p>15 Q. Is it your understanding that</p> <p>16 that's the -- what you're asking the Judge to do</p> <p>17 here? To eliminate that expansion?</p> <p>18 A. I would like to see that.</p> <p>19 Q. But my question: Is that your</p> <p>20 understanding of what you're asking him to do is</p> <p>21 to eliminate the entire expansion?</p> <p>22 A. No, I'm not asking him to do that.</p> <p>23 No, sir.</p>	<p>1 or do you think it's a good time for a</p> <p>2 lunch break? I don't know if you got</p> <p>3 a short witness?</p> <p>4 MR. LUDDER: Yeah.</p> <p>5 HEARING OFFICER: They never are.</p> <p>6 MR. LUDDER: I don't think I am,</p> <p>7 no, sir.</p> <p>8 HEARING OFFICER: Y'all want to go</p> <p>9 to one o'clock? I got about eight</p> <p>10 minutes until 12:00. Let's go to one</p> <p>11 o'clock, and we'll be in recess until</p> <p>12 one p.m. Thank you.</p> <p>13 (A lunch recess was taken.)</p> <p>14 HEARING OFFICER: All right. Next</p> <p>15 witness, Mr. Ludder.</p> <p>16 MR. LUDDER: The Petitioners call</p> <p>17 Michael LeBleu.</p> <p>18 THE WITNESS: Give me a second.</p> <p>19 MR. LUDDER: Yes, sir.</p> <p>20 HEARING OFFICER: Take your time.</p> <p>21 (A discussion was held off the</p> <p>22 record.)</p> <p>23 HEARING OFFICER: This gentleman to</p>

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<p>1 your left is going to ask you to raise 2 your right hand, and he'll swear you 3 in. 4 (The Witness was duly sworn.) 5 DIRECT EXAMINATION 6 BY MR. LUDDER: 7 Q. All right. Will you state your 8 name, please? 9 A. Michael Alan LeBleu. 10 Q. And could you spell LeBleu? 11 A. L-e-B-l-e-u. 12 Q. All right. And where do you live, 13 your address? 14 A. I live at 2947 Webb Road just up 15 the way from Bobby. 16 Q. Okay. And how long have you lived 17 there? 18 A. I've lived there for ten years 19 now. 20 Q. And do you own your home? 21 A. Yes, I do. 22 Q. And you've owned your home that 23 entire ten years?</p>	<p>1 Q. You're pointing to the pink one? 2 A. Yes. 3 Q. That's what you believe to be the 4 existing landfill? 5 A. Uh-huh (affirmative response). 6 Q. Okay. Do you know how far your 7 house is from the existing landfill? 8 A. As the bird flies? No. 9 Q. Okay. All right. You're closer 10 to the landfill than Bobby is; is that right? 11 A. Right. Yes, sir. 12 Q. Okay. In the last ten years, have 13 you experienced any -- any problems that you 14 attribute to the landfill? The existing 15 landfill? 16 A. Yes, sir. One was the traffic 17 that was out there, they had trucks moving up 18 and down the road. It was just annoying sound 19 is basically what it was due to the traffic. I 20 also had my trees full of buzzards, crows, 21 little blackbirds, and hawks. Then the odor. 22 My kids would be playing outside and come in and 23 say, Grandpa, it stinks so bad out there, we</p>
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<p>1 A. Yes. 2 Q. If you would, in the drawing 3 that's in front of you, this has been 4 marked -- this document has been marked as 5 Exhibit P-5, and it's the drawing titled, 6 Boundary Sketch? 7 A. Uh-huh (affirmative response). 8 Q. Can you identify where your house 9 is in this drawing? 10 A. Okay. Excuse me. Let's see. 11 Where's... 12 Q. This is Webb. 13 A. Okay. This is Webb? Okay. Mine 14 is right here. Right there. 15 Q. Okay. Would you circle that and 16 put your initials next to it, please? 17 A. Next to it? I'll put it in it. 18 Q. That's fine. In it is fine, yeah. 19 Okay. And your initials are? 20 A. ML. 21 Q. ML? Okay. And do you know where 22 the existing landfill is? 23 A. This one right here.</p>	<p>1 can't play. So they'd come inside and have to 2 close all the windows and keep the kids in the 3 house until that odor dissipated. When they got 4 on dry days, and the dust was kicking up, if I'm 5 out cutting my field using my bush hog, I have 6 to stay out -- or I should say go back in the 7 house after a while, because the dust itself 8 exacerbates my breathing problems. So -- 9 Q. Let me interrupt you there. The 10 dust that you're talking about, where was that 11 from? 12 A. From the landfill. 13 Q. And was it -- did it deposit on 14 your property, or was it in the air? 15 A. Yes, it did. My vehicles 16 outside -- I try to keep them clean, especially 17 from pollen, and when this dust was up, it would 18 cover all of my vehicles. 19 Q. All right. And when you talked 20 about bush-hogging, bush-hogging creates dust, 21 doesn't it? 22 A. It does, but it's very minute, 23 because the grass is being cut and deposited to</p>

<p style="text-align: right;">Page 169</p> <p>1 the back. I don't have any sandy areas. 2 Everything I got is covered by grass. 3 Q. All right. So you said that you 4 were -- you experienced dust issues when you 5 were bush-hogging? 6 A. Yes, sir. 7 Q. Where does the dust come from? 8 A. Well, it starts off as a cloud, 9 like, a dark cloud over the landfill area, and 10 the breeze just pushes it right down across the 11 way. 12 Q. Onto your property? 13 A. Yes, sir. 14 Q. All right. Do you have any 15 problem at your house with -- with flies? 16 A. I did at one point, but I don't 17 now. 18 Q. And why is that? 19 A. Well, since they've closed the 20 landfill, I've not had as many birds, not had as 21 much vermin. I've had possums and raccoons come 22 in off of the area leading from the landfill to 23 my property, plus coyotes. And since they've</p>	<p style="text-align: right;">Page 171</p> <p>1 been able to have get-togethers -- well, at the 2 time -- when the time this all was going on, I 3 believe we -- we would have family get-togethers 4 while this stuff was going on? No. We weren't 5 able to be outside, because everyone was 6 complaining about the smell that was going on. 7 Q. All right. But that's improved 8 significantly -- 9 A. Yes, sir. 10 Q. -- since the landfill was closed? 11 A. Yes, sir. 12 Q. Now, you're familiar with where 13 Bobby Lewis lives? 14 A. Yes, sir. 15 Q. Have you been to his house? 16 A. Yes, sir, I have. Several times. 17 Q. Say, over the last ten years, any 18 idea how many times, or guess? 19 A. We're neighbors. We're back and 20 forth. So, no, sir, I couldn't give you an 21 exact number. 22 Q. More than ten? 23 A. More than ten? Yes.</p>
<p style="text-align: right;">Page 170</p> <p>1 closed the landfill, I have not seen any 2 coyotes, and I've only had two raccoons on my 3 property. 4 Q. And how have the buzzards been 5 since they closed the landfill? 6 A. The buzzards, they've decreased 7 greatly. I've only seen maybe five or six on my 8 property since then. 9 Q. And when the landfill -- existing 10 landfill was in operation, how many would you 11 see? 12 A. I have trees -- if you look at the 13 drawing -- I've got trees all around my 14 property. Every one of them would be full. So 15 to sit here and give you an exact number, I'm 16 sorry. That's a lot of trees, and I'd just be 17 lying to you if I generated a number for you. 18 Q. All right. Now, the odor issues 19 that you spoke of, has it -- have those odors 20 caused you any other problems besides telling 21 your -- or any other problems besides your kids 22 having difficulty playing outside? 23 A. Yes, sir, they have. We have not</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. All right. Have you ever seen 2 buzzards at -- on his property? 3 A. Yes, sir, I have. And I can 4 guarantee you, the trees that he had at the 5 time, plus the trees I got gives you real 6 concern, because you walk out there, and you see 7 one pointing at you, and the other one's going 8 (indicating). Yeah. I'm sorry for interjecting 9 a little. 10 Q. And can you describe the 11 population of buzzards at Bobby Lewis's house 12 that you've seen? 13 A. Lord, it was almost as bad as at 14 my house. 15 Q. Okay. Have you ever been up to 16 Bobby Lewis's house and smelled the same odors 17 that you smelled at your house? 18 A. Yes, sir. 19 Q. Have you ever been at Bobby 20 Lewis's house and heard the same noises that you 21 hear at your house? 22 A. Many times, sir. 23 Q. And do those noises include, like,</p>

<p style="text-align: right;">Page 173</p> <p>1 tailgates slamming? 2 A. Yes, sir, they do. 3 Q. Do they include backup alarms? 4 A. Yes, sir. 5 Q. And do those noises interfere with 6 anything that you do at your house? 7 A. Yes, sir. I'm disabled, and the 8 pain that I have in my body prevents me from 9 sleeping comfortably at night. So I usually go 10 to sleep later in the day when I -- when I get 11 up. But when those things are going off, it 12 just keeps me awake, and I can't get to sleep 13 after that. 14 Q. What time in the morning would 15 those noises begin? 16 A. They would usually begin between 17 6:30, then escalate on throughout the day. 18 Q. All right. And you prefer to 19 sleep in until when? 20 A. I prefer to sleep in until at 21 least nine or ten, because that way, I got the 22 whole family gone. 23 Q. Now, you mentioned coyotes, I</p>	<p style="text-align: right;">Page 175</p> <p>1 A. Yeah, okay. Yeah, it does say 2 "proposed." 3 Q. Okay. When that commences 4 disposal of waste, do you have any idea whether 5 the problems that you have experienced in the 6 past will resume? 7 A. Yes, I do. 8 Q. And why is that? 9 A. One, the noise is still going to 10 continue; two, the odor is going to continue; 11 and three, once all that starts, the vermin is 12 going to come back, and I don't want to go 13 through this again. 14 MR. LUDDER: All right. That's all 15 I have from this Witness, Judge. 16 HEARING OFFICER: Cross? 17 MR. CARTER: No questions. 18 MR. WHITE: Just briefly, please, 19 sir. I'm Len White. I represent the 20 City of Dothan. 21 THE WITNESS: Okay, sir. 22 CROSS-EXAMINATION 23 BY MR. WHITE:</p>
<p style="text-align: right;">Page 174</p> <p>1 believe, correct? 2 A. Yes, sir. 3 Q. How often would you hear or see 4 coyotes on your property? 5 A. On the average, four to five times 6 an evening. 7 Q. This is during the -- 8 A. Well, four to five times a week. 9 You know, usually once an evening, and they'd 10 usually come in a pack. 11 Q. And this is while the landfill was 12 in operation? 13 A. Yes, sir. 14 Q. And what's been the frequency 15 since the landfill has closed? 16 A. I've not seen any. 17 Q. All right. Now, you're familiar 18 with the area where the proposed landfill 19 expansion is going to be? 20 A. I believe it's somewhere right 21 around in here. 22 Q. And you're pointing to this 23 teal-colored area?</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. I believe you testified that you 2 began living at 2947 Webb Road ten years ago? 3 A. Yes, sir. 4 Q. All right. And the problems that 5 you referred to with the buzzards and the dust 6 and the smell, how long was it before that 7 started after you moved in? Or was it already 8 ongoing? 9 A. It was already ongoing, because 10 the people that we bought the house was telling 11 us about it -- 12 MR. WHITE: Okay. That's all. 13 A. -- that we bought the house from. 14 MR. WHITE: That's all. 15 HEARING OFFICER: Any redirect? 16 MR. LUDDER: Yes. 17 REDIRECT EXAMINATION 18 BY MR. LUDDER: 19 Q. Mr. LeBleu, did you have any idea 20 that a landfill expansion was going to occur 21 back when you bought the house? 22 A. No, I did not. As a matter of 23 fact, all I saw was a big open field across from</p>

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<p>1 me, and I didn't know we had a landfill there to 2 begin with.</p> <p>3 Q. Okay. Was it your understanding, 4 at any time, that the existing land -- landfill 5 would be closed, and that no further landfill 6 activities would occur at that site?</p> <p>7 A. That's what I heard.</p> <p>8 MR. LUDDER: No further questions.</p> <p>9 THE WITNESS: Well, if I may 10 interject, I did go down to City Hall 11 once, and they did tell me that the 12 place was closing, that they weren't 13 going to use it anymore. So I'm just 14 saying it, there was a verbal comment 15 made to me from the City Hall.</p> <p>16 HEARING OFFICER: Cross?</p> <p>17 MR. CARTER: We have no questions.</p> <p>18 HEARING OFFICER: Mr. White?</p> <p>19 MR. WHITE: No, sir.</p> <p>20 HEARING OFFICER: I had one 21 question for you.</p> <p>22 THE WITNESS: Yes, sir.</p> <p>23 HEARING OFFICER: Mr. Ludder asked</p>	<p>1 it's teal, and sometimes it's referred 2 to as green, and there are two -- a 3 couple other colors on there. I just 4 want to make sure I know what we're 5 talking about.</p> <p>6 THE WITNESS: All right, sir.</p> <p>7 MR. LUDDER: Your Honor, I don't 8 expect a recall of Mr. LeBleu, so he 9 could stay in the hearing room until 10 he needs to leave.</p> <p>11 HEARING OFFICER: You can stay in 12 and listen, or you can go home. 13 Either way you want to do it.</p> <p>14 THE WITNESS: If you don't mind, 15 I'll sit in the back.</p> <p>16 HEARING OFFICER: All right. Be 17 careful.</p> <p>18 (A brief recess was taken.)</p> <p>19 HEARING OFFICER: He'll swear you 20 in.</p> <p>21 THE WITNESS: All right.</p> <p>22 (The Witness was duly sworn.)</p> <p>23</p>
Page 178	Page 180
<p>1 you a question about the proposed 2 landfill. Will you point to it for 3 me?</p> <p>4 THE WITNESS: Well, it's easy. It 5 says --</p> <p>6 HEARING OFFICER: Yeah, okay. 7 Thank you. And I know you're going to 8 think I'm crazy, but tell me what 9 color that is.</p> <p>10 THE WITNESS: That's teal.</p> <p>11 HEARING OFFICER: Teal? Okay. 12 Thank you.</p> <p>13 THE WITNESS: Or if you prefer, 14 green. Do you like green?</p> <p>15 HEARING OFFICER: Thank you very 16 much. Thank you, sir. You're 17 excused.</p> <p>18 THE WITNESS: The only reason I 19 know that is because I have a nursing 20 outfit that's that color.</p> <p>21 HEARING OFFICER: I -- I have to 22 read this record and look at these 23 exhibits afterwards, and sometimes</p>	<p>1 DIRECT EXAMINATION</p> <p>2 BY MR. LUDDER:</p> <p>3 Q. Would you please state your name, 4 please?</p> <p>5 A. My name is Gavin Whatley.</p> <p>6 Q. Could you spell your last name?</p> <p>7 A. W-h-a-t-l-e-y.</p> <p>8 Q. And Gavin is --</p> <p>9 A. Gavin, G-a-v-i-n.</p> <p>10 Q. All right. Thank you. What's 11 your present residential address?</p> <p>12 A. 2833 Omussee -- O-m-u-s-s-e-e 13 Road, Dothan, Alabama, 36303.</p> <p>14 Q. And how long have you lived there?</p> <p>15 A. In that particular -- at that 16 address, about 40 years.</p> <p>17 Q. Okay.</p> <p>18 A. I grew up about a quarter of a 19 mile from there though.</p> <p>20 Q. All right. Do you know 21 Mr. Bobby -- Bobby Lewis?</p> <p>22 A. Yes, I do.</p> <p>23 Q. How long have you known him?</p>

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<p>1 A. Probably about a better part of 40 2 or 50 years. We're close to the same age and 3 lived in the same area. 4 Q. All right. Have you been to his 5 house? 6 A. Oh, yes. 7 Q. How many times? 8 A. Oh, I don't know. Probably in the 9 last ten years, maybe a couple dozen, maybe. 10 Q. A couple dozen? 11 A. At the most. 12 Q. In the times that you have visited 13 him at his house, have you observed any -- any 14 buzzards on his property? 15 A. I have. And flying on the 16 property -- over his property in the trees. 17 Q. All right. Do you have any idea 18 how many? 19 A. It looked like more than what 20 you'd normally see sitting in the trees. A 21 couple dozen, maybe 30 or 40 at one time. 22 Q. Okay. And during the times that 23 you have visited Bobby Lewis at his house, have</p>	<p>1 noise -- equipment making noise. 2 Q. All right. And did you observe 3 any dust clouds coming from the landfill at any 4 time? 5 A. Yeah, when the wind was coming 6 from the landfill toward his house, yeah, you'd 7 see the dust. 8 Q. Going onto Bobby Lewis's property? 9 A. On his property. 10 Q. All right. Now, you've 11 been -- you drive Webb Road frequently, correct? 12 A. Yes, I do. 13 Q. Do you see -- or have you observed 14 the same conditions up and down Webb Road? 15 A. See, like, in the last few months, 16 four or five, you don't see the dust. And, of 17 course, I usually have the windows up, and I'm 18 watching what I'm doing. I haven't seen the 19 traffic or the dust. Haven't really observed 20 buzzards, haven't looked. And you don't smell 21 it that much now. 22 Q. So in the last few months, you 23 haven't seen as many buzzards?</p>
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<p>1 you observed any odors? 2 A. Oh, yes. Unless the wind was 3 directly out of the north, and it blew it across 4 the area in question, yes, I smelled it. It was 5 pretty rough. 6 Q. So when the wind was coming from 7 the landfill direction -- 8 A. Oh, yes. 9 Q. -- that's when you would smell 10 it? 11 A. That's when you would smell it. 12 Q. And how -- could you -- could you 13 describe the odor? 14 A. It smelled like decaying organic 15 matter. Not necessarily rotting flesh, but just 16 putrid. Very unpleasant. 17 Q. Okay. Did you observe or hear any 18 noises coming from the landfill while you were 19 there? 20 A. I mean, I heard it, but it didn't 21 disturb me. 22 Q. Okay. 23 A. I mean, I farmed, and I'm used to</p>	<p>1 A. No. I haven't seen the dust, and 2 really haven't noticed the smell. 3 Q. In the last few months? 4 A. Yeah, correct. 5 Q. And prior to the last few months? 6 A. Well, over the last 30 or 40 7 years, I mean, you'd go down that road, and you 8 got a wind out of the south or southwest, you 9 roll your windows up. It's pretty rank. And, 10 you know, dust coming across the road. 11 Q. And are you aware of the City's 12 plan as to expand the landfill? 13 A. I have heard that they are 14 expanding -- would like to expand to the south 15 of the present facility. 16 Q. Do you know where that expansion 17 is going to occur? 18 A. I do -- 19 Q. And where is it? 20 A. -- and on this map, it would be 21 the green area. 22 Q. All right. And you're 23 referring --</p>

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<p>1 A. This is the existing -- this is 2 Webb Road. I believe that's where Mr. Lewis 3 lives, I believe. Or maybe it's here. Yeah, 4 that's where Mr. Lewis lives, I think. 5 MR. WHITE: Could you -- for the 6 record, could you mark that, please? 7 THE WITNESS: Mark where Mr. -- let 8 me get my act together here. That's 9 where he lives, right there. 10 MR. WHITE: Would you initial that, 11 please, sir? 12 THE WITNESS: I have to get 13 oriented. 14 BY MR. LUDDER: 15 Q. All right. You have some question 16 about your choice? A location? 17 A. Well, he's one of these two right 18 here. There's the curve. That's the trailer, 19 that's the barn at the bottom of the hill, 20 that's a barn. No, I believe that's his house, 21 not this one. 22 Q. So the one that you initialed is 23 not --</p>	<p>1 THE WITNESS: I have to get on it 2 to know these things. I've read them 3 for years, but I get -- I have to look 4 at it and get my bearings. 5 BY MR. LUDDER: 6 Q. All right. So you've identified 7 the existing landfill as the pink area? 8 A. Yes. 9 Q. Okay. And you have identified the 10 proposed expanded landfill as the teal-colored 11 area? 12 A. That is my understanding. I have 13 not been on this property, but that is my 14 understanding, that it's south of the landfill. 15 HEARING OFFICER: I think he said 16 green. 17 MR. LUDDER: I'm just trying to be 18 consistent. 19 THE WITNESS: I think that's more 20 teal. I can't find a place on a map, 21 but I am not color-blind. 22 HEARING OFFICER: I agree with you. 23 I think that's green, and from now on,</p>
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<p>1 A. That would not be right, no. 2 Q. It's not Bobby Lewis's house? 3 A. No, that wouldn't be Bobby Lewis's 4 house. 5 Q. Did you identify the one with 6 the -- 7 A. I believe that would be more 8 appropriate. I mean, these houses are what, 150 9 yards apart? That's his house right there. 10 MR. LUDDER: Okay. Let the 11 Witness -- let the record show that 12 he's pointing to the location where 13 Bobby Lewis identified his house to 14 be. 15 MR. WHITE: David, could you have 16 him correct that then, if he's 17 changing it? 18 THE WITNESS: Yeah, just mark 19 through my initial? 20 MR. WHITE: And then initial what 21 you want to initial. 22 THE WITNESS: I'm sorry. 23 MR. WHITE: That's all right.</p>	<p>1 we're going to call it green. 2 THE WITNESS: Fair. You need me to 3 initial that? 4 MR. LUDDER: You're 5 pointing -- you're pointing to -- 6 THE WITNESS: I'm pointing at this 7 area right here, directly south of the 8 east side of the existing landfill. 9 MR. LUDDER: There you go. Got 10 you. Right, right. 11 HEARING OFFICER: Mr. Whatley, 12 everybody in this room knows where 13 that landfill is except me. And you 14 pointed to the green area, and from 15 now on, guys, it's green. 16 BY MR. LUDDER: 17 Q. Now, is your house visible on this 18 map? 19 A. No, it is not. 20 Q. In which direction is it? 21 A. It would be back in this 22 direction. It would be almost directly east of 23 this. I'd have to look it up.</p>

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<p>1 Q. And "east of this," you're</p> <p>2 referring to the existing landfill?</p> <p>3 A. The existing landfill and the</p> <p>4 proposed area. It's -- it's somewhere in this</p> <p>5 vicinity, about a mile and a half through the</p> <p>6 woods from Mr. Lewis's house.</p> <p>7 Q. Okay. Are you aware of anything</p> <p>8 on this map that appears to be incorrect?</p> <p>9 A. Yes, I am.</p> <p>10 Q. And what is that?</p> <p>11 A. This property line right here. My</p> <p>12 sister and I own property from the</p> <p>13 Georgia -- Alabama Power line, which continues</p> <p>14 across -- crosses in this road and headed on</p> <p>15 toward Dothan. That's this area right here.</p> <p>16 This is a right of way. We own property that</p> <p>17 goes from here -- it corners -- let's see, that</p> <p>18 would be the northwest corner of the property</p> <p>19 and continues along the run of the creek all the</p> <p>20 way to Highway 52. Therefore, this line cannot</p> <p>21 be correct.</p> <p>22 Q. So if this line, the white line</p> <p>23 you're referring to, on the east side of the</p>	<p>1 family has and has had for quite a number of</p> <p>2 years.</p> <p>3 MR. LUDDER: All right. No further</p> <p>4 questions.</p> <p>5 HEARING OFFICER: Cross?</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MR. CARTER:</p> <p>8 Q. Mr. Whatley, I'm Todd Carter, with</p> <p>9 the Department.</p> <p>10 A. How do you do, sir?</p> <p>11 Q. Good. You doing okay?</p> <p>12 A. Doing well, sir. I don't know</p> <p>13 where I am.</p> <p>14 Q. All right. Good to hear. Hey, I</p> <p>15 just had a couple questions for you. Now, I</p> <p>16 think you've already -- so where you reside is</p> <p>17 off the map?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now, and I think you had</p> <p>20 mentioned -- and you and Bobby Lewis and</p> <p>21 yourself, y'all grew up together, or you've</p> <p>22 known each other for a long time?</p> <p>23 A. I wouldn't say we grew up</p>
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<p>1 drawing --</p> <p>2 A. If this, in fact, is the run of</p> <p>3 the creek, which it appears to be --</p> <p>4 Q. Let me ask you a question. If the</p> <p>5 white line to the east -- on the east side of</p> <p>6 the drawing is the landfill facility boundary,</p> <p>7 what you're saying is that line is incorrectly</p> <p>8 placed?</p> <p>9 A. Yes, it is.</p> <p>10 Q. Because where is your property</p> <p>11 line?</p> <p>12 A. The deeds specify the creek as the</p> <p>13 western boundary.</p> <p>14 Q. And that creek is inside --</p> <p>15 A. It's inside what they have drawn</p> <p>16 in these white lines.</p> <p>17 Q. Okay.</p> <p>18 A. It is to the west of that white</p> <p>19 line.</p> <p>20 Q. Okay. So it's your opinion that</p> <p>21 the City does not own the property that -- all</p> <p>22 the property that's within the white line?</p> <p>23 A. Not according to deeds that my</p>	<p>1 together, but we've known each other for a</p> <p>2 better part of our lives.</p> <p>3 Q. Okay. And I think -- when you say</p> <p>4 that's where he lives over on Webb Road --</p> <p>5 A. Yeah, uh-huh.</p> <p>6 Q. -- you described what I wrote</p> <p>7 down: Buzzards, odors, noise, dust. Now,</p> <p>8 when -- when are you saying you saw those things</p> <p>9 at Bobby Lewis's house? When exactly?</p> <p>10 A. It's been over the last 20 or 30</p> <p>11 years.</p> <p>12 Q. Okay.</p> <p>13 A. I mean he's been in that</p> <p>14 area -- we'd stop --</p> <p>15 THE WITNESS: I almost bought a</p> <p>16 truck from you here, what, about 25</p> <p>17 years ago?</p> <p>18 A. I'd go by his house, and -- I used</p> <p>19 to farm.</p> <p>20 Q. Okay.</p> <p>21 A. And I'd see the buzzards and see</p> <p>22 other things.</p> <p>23 Q. Okay. Since it's been that long,</p>

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<p>1 where exactly -- when you say there was dust, 2 was it coming from -- which area was the dust 3 coming from? Because this is the old closed 4 landfill, and this is the existing. Can you 5 recall?</p> <p>6 A. Well, it would depend on which way 7 the wind was blowing. If the wind was blowing 8 out of the southeast, you'd see dust over here. 9 If it was blowing out of the southwest, it was 10 blowing right towards his house. I assume this 11 is oriented to the north.</p> <p>12 Q. It is. And -- but you're saying 13 the dust, when you were at Bobby Lewis's house, 14 was coming from which area?</p> <p>15 A. I don't believe it was coming from 16 here. It was coming from here (indicating). 17 Now, I can't...</p> <p>18 Q. Okay. Now, you say you live how 19 many miles --</p> <p>20 A. About a mile and a half directly 21 to the southeast, yes.</p> <p>22 Q. Okay. Now, do you have buzzards 23 at your house?</p>	<p>1 HEARING OFFICER: Mr. White?</p> <p>2 MR. WHITE: No questions.</p> <p>3 HEARING OFFICER: Thank you, sir.</p> <p>4 MR. LUDDER: Follow-up, Your Honor?</p> <p>5 HEARING OFFICER: Yes, sure.</p> <p>6 REDIRECT EXAMINATION</p> <p>7 BY MR. LUDDER:</p> <p>8 Q. Do you normally experience as many 9 buzzards at your house as you have seen at Bobby 10 Lewis's house?</p> <p>11 A. No, not really. I mean, in the 12 past -- I can give you an example here -- within 13 the past ten days, there was a raccoon that was 14 run over in the yard in front of me, and somehow 15 the buzzards managed to get it in my front yard, 16 and there were probably a dozen around that 17 thing, which is kind of odd for a -- wildlife 18 that you kill in a road.</p> <p>19 Q. When you saw buzzards at Bobby 20 Lewis's house, was it because they found 21 something to feed on there?</p> <p>22 MR. WHITE: Objection. Leading.</p> <p>23 HEARING OFFICER: Overruled.</p>
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<p>1 A. Excuse me. Yes.</p> <p>2 Q. Okay. Coyotes at all?</p> <p>3 A. Oh, yeah, we got coyotes. Now, I 4 don't farm anymore. There's a neighbor that 5 used to live back over here somewhere, 6 Mr. McArdle. He -- he farms our land now. He 7 has cows over there. I know when I was growing 8 up in high school -- and I went to high school 9 in the '60s -- we'd have -- every now and then 10 you'd have a cow that died, and you didn't find 11 it. And there'd be four or five buzzards around 12 it when you'd find it. But now, you get a big 13 cow -- I think there's a lot more buzzards 14 in -- in this area than there was 30 or 40 years 15 ago.</p> <p>16 Q. Okay. And then -- but you said 17 also, these other things that you brought up, 18 and the times you have gone to Mr. Lewis's house 19 in the last few months seem to be better?</p> <p>20 A. I think so, yes. I haven't 21 noticed it.</p> <p>22 MR. CARTER: Okay. I have nothing 23 further. Thank you.</p>	<p>1 A. I don't know. I don't know if 2 Bobby ever had livestock that would have died. 3 They didn't seem to be on the ground.</p> <p>4 Q. I'm sorry. Say that again?</p> <p>5 A. They weren't on the ground eating 6 something.</p> <p>7 Q. Okay. They were in the trees?</p> <p>8 A. In the trees. Flying overhead, 9 but in the trees.</p> <p>10 MR. LUDDER: Okay, okay. No 11 further questions.</p> <p>12 HEARING OFFICER: Mr. Carter?</p> <p>13 MR. CARTER: Nothing further, Your 14 Honor.</p> <p>15 MR. WHITE: No, sir.</p> <p>16 HEARING OFFICER: Thank you, 17 Mr. Whatley. We appreciate you 18 coming.</p> <p>19 THE WITNESS: Thank you.</p> <p>20 MR. LUDDER: We don't expect to 21 call Mr. Whatley again, so he's free 22 if you want to excuse him.</p> <p>23 HEARING OFFICER: That means you</p>

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<p>1 can sit in here and listen if you want 2 to, but you're free to go home anytime 3 you want to. 4 THE WITNESS: Yeah, let me see what 5 my ride wants to do with me. 6 HEARING OFFICER: All right. Thank 7 you. 8 MR. LUDDER: Next, where is -- he's 9 going to go get him. 10 (A brief recess was taken.) 11 HEARING OFFICER: All right, sir. 12 You'll be sworn in by this gentleman 13 to your left, the court reporter. 14 (The Witness was duly sworn.) 15 DIRECT EXAMINATION 16 BY MR. LUDDER: 17 Q. Please state your name. 18 A. David F. Del Vecchio. 19 Q. And could you spell Del Vecchio? 20 A. D-e-l, new word, 21 capital V-e-c-c-h-i-o. 22 Q. Thank you. Mr. Del Vecchio, 23 what's your occupation?</p>	<p>1 Q. And do any of your relatives live 2 near you? 3 A. My daughter and her husband live 4 next door, and next to them live my son and my 5 daughter-in-law and my granddaughters. 6 Q. And is your son the Michael Del 7 Vecchio that's a Petitioner in this case? 8 A. Yes, he is. 9 Q. When did you first move to your 10 present address? 11 A. I believe we actually moved into 12 our home in '85. 13 Q. Okay. And how much property do 14 you have associated with your house? 15 A. 44 acres. 16 Q. And what do you do with that 44 17 acres? 18 A. I raise Angus cows. We have a 19 couple of horses, and we enjoy the property. 20 Q. When you purchased your house, 21 were you aware that there was an existing 22 landfill there? 23 A. I was. I was told by the agent,</p>
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<p>1 A. I am a minister. I pastor church. 2 Q. And how long have you been a 3 minister? 4 A. Nine years. 5 MR. WHITE: I'm sorry. Could you 6 repeat that? 7 THE WITNESS: I'm a minister. I 8 pastor church. I have been for nine 9 years in Dothan. 10 MR. WHITE: Thank you. 11 HEARING OFFICER: You pastor a 12 church? 13 THE WITNESS: Yes, sir. 14 HEARING OFFICER: Speak up, because 15 I'm a little hard of hearing. 16 THE WITNESS: I will do that. I 17 usually am too loud. 18 BY MR. LUDDER: 19 Q. What's your address? 20 HEARING OFFICER: Is that a witness 21 that came in? Thank you. I'm sorry. 22 THE WITNESS: 202 Del Vecchio Lane. 23 BY MR. LUDDER:</p>	<p>1 Angel -- Hazel Kistler, who's now deceased, that 2 because of the years that the dump had been 3 there, they were coming to the end of it. I was 4 much younger, and I believe what she told me 5 that we were coming to the end of the use of 6 that dump, and I felt like in the future that 7 dump would not be used anymore as a dump, 8 especially since it's in the middle of the city. 9 Q. Have you had any discussions with 10 City officials about continuing the dump there? 11 A. Mayor Mike Schmitz and Mike West 12 were in my home, and we talked about it in depth 13 before they purchased the 184 acres behind our 14 property. 15 Q. And what did you express to them? 16 A. I did not want to see the 17 continuing turkey buzzards. We have black 18 fences on our property, and there's as many as 19 two dozen turkey buzzards sitting on the fence. 20 And they mess the fence up, and the fences have 21 to be washed and repainted. I didn't want to 22 have the coyotes. I have lost a calf. I had 23 actually, on more than one occasion, run out to</p>

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<p>1 the field, because I had a newborn calf, and the 2 turkey buzzards would go after the calf's eyes. 3 So I went out in the field to defend my calves. 4 But a calf is worth a thousand bucks, so that's 5 a lot of money, especially when you raise a cow 6 to get to that place. And I also explained to 7 them, I constantly -- when I woke up, or when I 8 went outside, I could hear the banging of the 9 trucks. I could hear the backing up and the 10 going forward of the excavators, or the 11 bulldozers, whatever they were. And it's from 12 6:30 in the morning until dark. I mean, it's 13 every day. Not Saturday. On Friday, half a 14 day, but it's -- I could hear it all the time. 15 Q. Okay. Have you experienced any 16 issues on your property that you think are 17 related to the landfill? 18 A. There have been times when we were 19 forced inside because of smell. We keep our 20 windows closed. We have an issue now with -- is 21 it permissible for me to elaborate? 22 Q. Yes. 23 A. We have an issue now, because the</p>	<p>1 water -- instead of it flowing as it used to, it 2 now pools. It pools, and it sets there. And, I 3 mean, you can't even get down near the creek 4 anymore. When I'm mowing -- and I can't mow to 5 it anymore, because I can't get to it, because 6 the ground is so soggy. In fact, my wife has 7 pulled me out of the mud on more than one 8 occasion with my truck, because I get stuck with 9 my lawnmower. 10 Q. Okay. Let's look at the map 11 that's in front of you. This is Petitioner's 12 Exhibit 5. And can you identify where your 13 house would be, whether it's on the map or not? 14 A. I don't see my house on the map. 15 My house would be here. 16 Q. All right. You're pointing -- 17 A. Somewhere to my knee. 18 Q. Yeah, you're pointing to the left 19 lower -- or beyond the left lower corner of the 20 map, correct? 21 A. Yes, sir. 22 Q. And your -- you said your house or 23 your property is adjacent to your son's</p>
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<p>1 water is backing up where we have mosquitoes. 2 Like, we have a two-car garage, and we can't 3 keep the garage doors open, because the 4 mosquitoes go in there, and as soon as I close 5 the garage doors, the mosquitoes come in the 6 house. And it didn't used to be that way. That 7 happened about a year ago where the mosquitoes 8 became such an issue because of the water. The 9 person who sold the property, the 184 acres to 10 the City, came in there and clearcut the 11 property almost. And when they clearcut the 12 property almost, they destroyed the tributary, 13 Golf Creek. And the water that used to run off 14 on the property no longer runs off like it did. 15 It will linger for days in the back of my yard. 16 And it creates for us a lot of snakes, 17 moccasins -- cottonmouth moccasins. Up near my 18 garage, I killed a three-footer up near my 19 garage two weeks ago and saw another one in the 20 stream that goes next to my house within the 21 last few weeks. Haven't seen any in a number of 22 years, but saw them. A lot of mosquitoes. The 23 mosquitoes are terrible, because the</p>	<p>1 property? 2 A. It is. 3 Q. And have you been to your son's 4 property on occasion? 5 A. Regularly. 6 Q. And have you seen the same kinds 7 of issues that you attributed from the landfill 8 that occurred on your property? 9 A. Well, I wondered why he had 10 plastic bags in his trees, and the plastic bags 11 in the trees come from the wind off the dump. 12 And I don't -- I don't see him or my 13 granddaughters putting the plastic bags up in 14 the trees. That's not their usual thing. 15 Q. Have you seen buzzards on his 16 property? 17 A. Yes. Buzzards -- excuse me. 18 We've been forced inside because of smell and 19 mosquitoes. Mosquitoes, now. Really, we didn't 20 have an issue with mosquitoes, honestly. We 21 never had an issue with mosquitoes until the 22 last year or so. But we've never had problems 23 with mosquitoes. We had mosquitoes, but it was,</p>

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<p>1 like, Oh, there's a mosquito. Not, like, Oh, my 2 goodness. Big difference. 3 Q. Now, are you aware that the 4 existing landfill may not be taking waste now? 5 A. I am actually not aware of any of 6 that. 7 Q. Okay. You are aware that the 8 proposed landfill expansion is not taking waste 9 now? 10 MR. WHITE: Objection. Leading. 11 HEARING OFFICER: Overruled. Are 12 you aware of it or not? 13 THE WITNESS: I am not aware of it. 14 BY MR. LUDDER: 15 Q. Okay. 16 A. I have no knowledge of anything 17 that's going on concerning the landfill at this 18 time. 19 Q. Okay. Have you seen a reduction 20 in odors at your house or your son's house in 21 the last few months? 22 A. I haven't smelled anything or 23 heard anything or really had a problem in,</p>	<p>1 anticipation of selling the land to the City, 2 clearcut, almost, that property. 3 Q. Okay. 4 A. And they had skidders back through 5 there, and this tributary called Golf Creek no 6 longer is a tributary. It's packed up, and it's 7 gotten built up, and all the water that used to 8 flow no longer flows. It pools and then comes 9 back. 10 Q. Okay. So that happened before the 11 property, I guess, was sold to the City? 12 A. That is correct. 13 Q. All right. Now, you mentioned the 14 issue with the plastic bags. Is that something 15 recently? Or is -- 16 A. I haven't seen any recently. 17 Q. Okay. So how long ago was that? 18 A. If you ask my wife about time, 19 she'll tell you I don't know how to figure it 20 out or tell time, but it's been a while. It's 21 been at least -- I would say at least a year or 22 more. It's been perhaps two years or more. I 23 haven't seen any in a long time.</p>
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<p>1 probably, the last six months. I still see the 2 buzzards. We still see a lot of buzzards, a lot 3 more buzzards than we should. But other than 4 the water and the buzzards, no smell, no sound, 5 and no odor, at least since last December. 6 MR. LUDDER: Okay. No further 7 questions. 8 HEARING OFFICER: The Department? 9 MR. CARTER: Just a few, Your 10 Honor. 11 CROSS-EXAMINATION 12 BY MR. CARTER: 13 Q. Pastor Del Vecchio, my name's Todd 14 Carter. I represent the Department. 15 Now, just to make sure I'm clear and 16 understand better, the area where you're saying 17 y'all are concerned about the water ponding 18 up -- 19 A. Yes, sir. 20 Q. -- that -- that was based on, I 21 guess what you said, a former property owner, 22 like, clearcutting the property? 23 A. The previous property owner, in</p>	<p>1 Q. Okay. And now -- but I think what 2 your testimony is -- but over the past few 3 months, I think you said December, since 4 December, it's been better? 5 A. Much better. 6 Q. Okay. 7 A. Seen or heard nothing. 8 MR. CARTER: Okay. Nothing 9 further. 10 HEARING OFFICER: Mr. White? 11 MR. WHITE: No questions. 12 HEARING OFFICER: All right. 13 Mr. Ludder, any redirect? 14 MR. LUDDER: Yes. 15 REDIRECT EXAMINATION 16 BY MR. LUDDER: 17 Q. Mr. Del Vecchio, do you know when 18 the title to the property was transferred to the 19 City? 20 A. I do not. 21 Q. Do you know if the land that was 22 clearcut was clearcut before title was 23 transferred or after?</p>

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<p>1 A. I believe so. 2 Q. You believe it was before? 3 A. Yes, sir. 4 MR. LUDDER: Okay. No further 5 questions. 6 HEARING OFFICER: Mr. Carter? 7 MR. CARTER: Nothing further, Your 8 Honor. 9 MR. WHITE: No, sir. 10 HEARING OFFICER: Thank you, 11 Mr. Del Vecchio. May he be excused? 12 MR. LUDDER: Yes, sir. 13 HEARING OFFICER: And excused from 14 the rule? That means you can sit in 15 here if you want to, or you can go 16 home if you want to. 17 THE WITNESS: I'll sit here until 18 4:00. 19 HEARING OFFICER: Okay. Thank you. 20 MR. LUDDER: All right. Your 21 Honor, we're going into ADEM witnesses 22 now. Jared Kelly, please. 23 MR. SASSER: Your Honor, may I take</p>	<p>1 Q. In what division or branch? 2 A. In the Solid Waste. 3 Q. Solid Waste Branch? 4 A. Yes. 5 Q. And is that in the Land Division? 6 A. Land Division, yes. 7 Q. How long have you been a permit 8 engineer? 9 A. Seven and a half years. 10 Q. How many permits have you -- or 11 how many landfill permits have you reviewed? 12 A. In the seven and a half years? 13 Q. Yeah. 14 A. There's no way of knowing that. A 15 lot. I mean... 16 Q. How many -- do you know how 17 many -- do you know how many municipal waste 18 landfills there are in Alabama? 19 A. Not off the top of my head. I 20 have -- I have four, I believe. 21 Q. You're responsible for four? 22 A. But normally I have the five 23 other -- five of those.</p>
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<p>1 a couple of minutes while we're 2 waiting on witnesses? 3 HEARING OFFICER: Let's take about 4 ten minutes. 5 (A brief recess was taken.) 6 (The Witness was duly sworn.) 7 DIRECT EXAMINATION 8 BY MR. LUDDER 9 Q. Will you state your name, please? 10 A. Jared Kelly. 11 Q. And, Mr. Kelly, my name is David 12 Ludder, I represent the Petitioners in this 13 matter. Could you tell us how long you have 14 been working for the Department? 15 A. Approximately seven and a half 16 years. 17 Q. Seven and a half years from today 18 backward? 19 A. Yeah. 20 Q. And what's your position and 21 title? 22 A. I am a Department Engineer. 23 Permit Engineer.</p>	<p>1 Q. All right. Have you reviewed 2 permit renewals on those four or five? 3 A. Sure. 4 Q. During the last seven years? 5 A. Yeah. 6 Q. Okay. And was the permit 7 modification for the Dothan landfill one of 8 those? 9 A. Yes. 10 Q. Did you also work on the original 11 permit for the landfill, being the 2013 permit? 12 A. The renewal of '13? 13 Q. In 2013 -- yeah, it would have 14 been a renewal. 15 A. A renewal, yes. 16 Q. Okay. Let me go through some 17 exhibits with you, Joint Exhibit Number 3, Part 18 I. Would you take a look at -- if you'll turn 19 to Joint Exhibit Number 3, Part I -- which, 20 apparently, is almost this entire binder -- and 21 tell me if that is part of the permit 22 application that the City of Dothan submitted to 23 the Department to expand the City of Dothan</p>

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<p>1 landfill.</p> <p>2 (The Witness examined the</p> <p>3 document.)</p> <p>4 A. It looks to be. I don't</p> <p>5 know -- is the slope stability analysis in with</p> <p>6 this as well? I haven't seen it yet.</p> <p>7 Q. It may not be. It may be in a</p> <p>8 later exhibit. I just wanted to know if that --</p> <p>9 A. Yeah.</p> <p>10 Q. -- is that part -- part of the</p> <p>11 application?</p> <p>12 A. Part of it, yes. I got -- I</p> <p>13 will -- it is part of it.</p> <p>14 Q. Okay. Can you tell me when that</p> <p>15 part, Joint Exhibit Number 3, Part I, was</p> <p>16 submitted to the Department?</p> <p>17 A. 2015 is all I can -- I could tell</p> <p>18 you. I would assume.</p> <p>19 Q. I'm sorry?</p> <p>20 A. 2015.</p> <p>21 Q. Is there a date on it?</p> <p>22 A. Oh, I mean, I -- oh, you want me</p> <p>23 to read the date? Yeah, January 15 -- January</p>	<p>1 MR. WHITE: I'm sorry. Would you</p> <p>2 say that again?</p> <p>3 A. I know for a fact that it was</p> <p>4 submitted at the same time.</p> <p>5 MR. WHITE: Right.</p> <p>6 Q. And Joint Exhibit Number 3, Part</p> <p>7 III, do you recognize that document?</p> <p>8 A. Yes.</p> <p>9 Q. And is that a scaled-down version</p> <p>10 of the original drawings for the landfill?</p> <p>11 A. Correct.</p> <p>12 Q. Is that the -- are these</p> <p>13 the -- the drawings that are the same as Exhibit</p> <p>14 J-3, Part III?</p> <p>15 MR. WHITE: Let the record reflect</p> <p>16 he's referring to Petitioner 5.</p> <p>17 MR. LUDDER: Yes.</p> <p>18 HEARING OFFICER: Thank you.</p> <p>19 A. It does look -- it is.</p> <p>20 Q. Yes? And when was -- when were</p> <p>21 those drawings?</p> <p>22 A. They were all submitted together</p> <p>23 jointly with the application.</p>
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<p>1 15 is when we received it.</p> <p>2 Q. Okay. January 15 of 2015?</p> <p>3 A. Of '15, correct.</p> <p>4 Q. Okay. Let me ask you now to look</p> <p>5 at Joint Exhibit Number 3, Part II, which is</p> <p>6 probably in the next volume. Part II, and have</p> <p>7 you seen that one, that document before?</p> <p>8 A. Correct.</p> <p>9 Q. What is that?</p> <p>10 A. That is the Static Stability</p> <p>11 Analysis.</p> <p>12 Q. And do you know when that was</p> <p>13 submitted to the Department?</p> <p>14 A. It was submitted the same time as</p> <p>15 the application was submitted.</p> <p>16 Q. Is there any stamp on that</p> <p>17 document from the Department?</p> <p>18 A. Not that I can...I do not see one.</p> <p>19 Q. Okay. To your best recollection,</p> <p>20 it was submitted at the same time?</p> <p>21 A. I -- I know for a -- yeah. I know</p> <p>22 for a fact it was.</p> <p>23 Q. Okay.</p>	<p>1 Q. Okay. So J-3, Part I; J-3, Part</p> <p>2 II; and J-3, Part III, were submitted together?</p> <p>3 A. Correct.</p> <p>4 Q. Now, let me show you what's marked</p> <p>5 as Exhibit J-3, Part IV, and ask you if you can</p> <p>6 identify what that is.</p> <p>7 A. This is the actual application, I</p> <p>8 believe.</p> <p>9 Q. The application form?</p> <p>10 A. The actual -- yes. I'm sorry.</p> <p>11 The application form that we have.</p> <p>12 Q. And that's how many pages?</p> <p>13 A. It's three total pages.</p> <p>14 Q. Okay. And when was that received?</p> <p>15 A. January 26th, 2015.</p> <p>16 Q. Is that the same date as the rest</p> <p>17 of the application?</p> <p>18 A. No.</p> <p>19 Q. So that was submitted before the</p> <p>20 rest of the application was submitted?</p> <p>21 A. I believe it was after, correct?</p> <p>22 What exhibit was it? That one. Yeah, after.</p> <p>23 Q. Okay. And Exhibit J-3, Part V,</p>

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<p>1 was that part of the application?</p> <p>2 A. No.</p> <p>3 Q. Oh, it's not? When was that</p> <p>4 submitted?</p> <p>5 A. Well, this is our fee sheet</p> <p>6 stating that we received a fee from the City of</p> <p>7 Dothan.</p> <p>8 Q. Okay. So that's not part of the</p> <p>9 application?</p> <p>10 A. No.</p> <p>11 Q. Okay. Exhibit J-3, Part VI, was</p> <p>12 that part of the application?</p> <p>13 A. No.</p> <p>14 MR. WHITE: If you would...</p> <p>15 MR. SASSER: Is that the e-mails?</p> <p>16 MR. LUDDER: Uh-huh.</p> <p>17 BY LUDDER:</p> <p>18 Q. Does the Solid Waste Branch</p> <p>19 customarily prepare notices to the public of</p> <p>20 permit applications and proposed permits?</p> <p>21 A. It depends on what they're</p> <p>22 applying for.</p> <p>23 Q. Okay. In this case, there was a</p>	<p>1 Q. Okay, okay. When you drafted the</p> <p>2 notice for the -- for this permit modification,</p> <p>3 did you include any hyperlinks to documents?</p> <p>4 A. No.</p> <p>5 Q. You didn't?</p> <p>6 A. No. Not me personally.</p> <p>7 Q. I'm sorry?</p> <p>8 A. Not me personally. I just</p> <p>9 construct the document.</p> <p>10 Q. All right. Would you instruct the</p> <p>11 person at Permits and Services to include a</p> <p>12 hyperlink to documents?</p> <p>13 A. No.</p> <p>14 Q. Would you provide them with</p> <p>15 documents to hyperlink?</p> <p>16 A. Yes.</p> <p>17 Q. All right. Did you provide</p> <p>18 ADEM -- or excuse me.</p> <p>19 Did you provide the person at Permits and</p> <p>20 Services what's been shown as Exhibit J-3, Parts</p> <p>21 I through III?</p> <p>22 A. Which was?</p> <p>23 Q. Excuse me -- yeah, Parts I through</p>
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<p>1 proposed permit modification application?</p> <p>2 A. Uh-huh (affirmative response).</p> <p>3 Q. Would you have prepared a public</p> <p>4 notice for that?</p> <p>5 A. Yes.</p> <p>6 Q. And in that, would you also post a</p> <p>7 public notice on the internet?</p> <p>8 A. Yes.</p> <p>9 Q. Would you have been the one to</p> <p>10 prepare the notice?</p> <p>11 A. No, I would not.</p> <p>12 Q. Who would have been?</p> <p>13 A. Someone in our Permits and</p> <p>14 Services group would actually post that to our</p> <p>15 website.</p> <p>16 Q. Someone where?</p> <p>17 A. In Permits and Services.</p> <p>18 Q. Permits and Services?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So you would not draft the</p> <p>21 language for the notice?</p> <p>22 A. Sure, I would, but I would e-mail</p> <p>23 it to her to put it on the actual website.</p>	<p>1 III.</p> <p>2 A. I through III? Yes, I should have</p> <p>3 given those documentations.</p> <p>4 Q. That was your intention to provide</p> <p>5 that?</p> <p>6 A. Yes.</p> <p>7 Q. Did you intend that the public</p> <p>8 rely on that information to review this proposed</p> <p>9 activity -- proposed permit?</p> <p>10 A. Ask that again.</p> <p>11 Q. Did you -- when you provided that</p> <p>12 information and instructed that they provide it</p> <p>13 to the public via the internet --</p> <p>14 A. Uh-huh.</p> <p>15 Q. -- did you intend that the public</p> <p>16 use that information to review the proposal?</p> <p>17 A. Sure, if they'd have wanted to.</p> <p>18 Q. Okay. I assume that you're</p> <p>19 familiar with the proposed landfill expansion</p> <p>20 location?</p> <p>21 A. Uh-huh (affirmative response).</p> <p>22 Q. And let me refer you to the</p> <p>23 drawing, Boundary Sketch, on Exhibit P-5. Is</p>

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<p>1 that the green area shown on this -- on this</p> <p>2 map?</p> <p>3 A. Sure.</p> <p>4 Q. It is? And do you know how</p> <p>5 many --</p> <p>6 A. Well, hold on. Of the MSW</p> <p>7 section, yes.</p> <p>8 Q. The MSW section? Okay. And is</p> <p>9 there another section?</p> <p>10 A. Yes. The C&D section.</p> <p>11 Q. C&D section? Okay. And that</p> <p>12 stands for what?</p> <p>13 A. Construction and Demolition.</p> <p>14 Q. Construction and Demolition? And</p> <p>15 what color is that?</p> <p>16 A. I would say that's a -- close to</p> <p>17 yellow, maybe. Orange.</p> <p>18 Q. Okay. Do you know how many acres</p> <p>19 the proposed MSW landfill is?</p> <p>20 A. Not off the top of my head, no.</p> <p>21 Q. Can you look it up in J-3?</p> <p>22 A. Sure. Well, is it listed on here</p> <p>23 anywhere?</p>	<p>1 A. The app -- I mean, the permit?</p> <p>2 The actual permit that I wrote, or the</p> <p>3 application? Or --</p> <p>4 Q. Yes. Well, I'm just trying to get</p> <p>5 an answer to how many acres the construction and</p> <p>6 demolition -- wherever you find it is up to you.</p> <p>7 A. Sure. 13.6.</p> <p>8 Q. 13.6 acres?</p> <p>9 A. Acres, yes.</p> <p>10 Q. And you're referring to what</p> <p>11 document?</p> <p>12 A. This, at the moment, is the Final</p> <p>13 Determination.</p> <p>14 Q. Which is Exhibit P-1 [verbatim]?</p> <p>15 A. Exhibit Number 1.</p> <p>16 Q. I'm sorry, J-1.</p> <p>17 A. This is J, yeah.</p> <p>18 Q. Right.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Now, the permit authorizes</p> <p>21 a certain volume of waste that can be disposed</p> <p>22 of on a -- I think, a daily average basis; isn't</p> <p>23 that right?</p>
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<p>1 Q. You might find it in the details,</p> <p>2 if you look.</p> <p>3 A. 8.37152, so that's...</p> <p>4 HEARING OFFICER: A little louder,</p> <p>5 please, sir.</p> <p>6 A. Well, I'll just state that Cell 6</p> <p>7 is 8.3 acres, Cell 7 is 7.1 acres, and Cell 8</p> <p>8 5.2 acres.</p> <p>9 Q. The sum of those would be the</p> <p>10 total landfill area?</p> <p>11 A. Yeah, 20.6 acres.</p> <p>12 Q. 20. -- what?</p> <p>13 A. .6.</p> <p>14 Q. 20.6 acres? And do you know --</p> <p>15 A. That's just the MS -- MSW</p> <p>16 expansion.</p> <p>17 Q. Right, all right. Since you</p> <p>18 brought it up, do you know how many acres is in</p> <p>19 the construction and demolition landfill?</p> <p>20 A. Let's see. Do we have -- would</p> <p>21 the actual permit be here?</p> <p>22 Q. It should be J-1. It should be at</p> <p>23 the very front.</p>	<p>1 A. Yes.</p> <p>2 Q. And what --</p> <p>3 A. Well, as a maximum.</p> <p>4 Q. Okay. What is that maximum?</p> <p>5 A. 400 tons a day.</p> <p>6 Q. 400 tons day? If they dispose of</p> <p>7 400 tons a day, how long do you anticipate the</p> <p>8 new landfill expansion to last?</p> <p>9 A. That's not a -- that's -- we don't</p> <p>10 really get into that. That's more of their own</p> <p>11 engineers who determine that.</p> <p>12 Q. Okay. All right. If you would,</p> <p>13 let's look at Exhibit J-3, Part I, which</p> <p>14 is -- the first part of it is identified as the</p> <p>15 Operations Manual, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Can you find Appendix 2.1?</p> <p>18 MR. LUDDER: Can we go off the</p> <p>19 record for a second?</p> <p>20 (A discussion was held off the</p> <p>21 record.)</p> <p>22 BY MR. LUDDER:</p> <p>23 Q. All right. Now, can you find</p>

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<p>1 within Appendix 2.1, Appendix F?</p> <p>2 MR. WHITE: Is this my copy?</p> <p>3 MR. LUDDER: Yeah.</p> <p>4 MR. WHITE: Okay.</p> <p>5 BY MR. LUDDER:</p> <p>6 Q. All right. You're on Appendix F?</p> <p>7 A. Uh-huh (affirmative response).</p> <p>8 Q. And what is Appendix F?</p> <p>9 A. It is the Expanded Preliminary</p> <p>10 Jurisdictional Determination Form, JD form.</p> <p>11 Q. I'm sorry. Can you say that</p> <p>12 again?</p> <p>13 A. The Expanded Preliminary</p> <p>14 Jurisdictional Determination Form, also known as</p> <p>15 the JD form.</p> <p>16 Q. And who authored that form? What</p> <p>17 agency?</p> <p>18 A. It was the City of Dothan, care of</p> <p>19 Sarah Sightler, CDG Engineering [verbatim] &</p> <p>20 Associates.</p> <p>21 Q. Okay. All right. Let me ask you:</p> <p>22 Who signed the form?</p> <p>23 A. This one does not have a</p>	<p>1 this correspondence?</p> <p>2 A. It says it's the Department of the</p> <p>3 Army Preliminary Jurisdictional Number, and it</p> <p>4 said basically, Based on our review of the</p> <p>5 information provided by TTL, including wetland</p> <p>6 data forms available to our office...as...</p> <p>7 So basically, they're -- they're</p> <p>8 determining if the wetland was available or not,</p> <p>9 or -- yeah.</p> <p>10 Q. Okay. So did the City approach</p> <p>11 the Corps seeking a wetlands determination? Is</p> <p>12 that what that's about?</p> <p>13 A. I really don't know how -- I would</p> <p>14 assume their engineers did. That's all outside</p> <p>15 of ADEM.</p> <p>16 Q. Okay. Did -- did you, as an ADEM</p> <p>17 employee and the reviewer of this application,</p> <p>18 have some concern about the existence of</p> <p>19 wetlands or streams on the property where the</p> <p>20 landfill expansion is?</p> <p>21 A. Did I have concerns?</p> <p>22 Q. Yes. Was it part of -- was that</p> <p>23 an issue to be addressed?</p>
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<p>1 signature.</p> <p>2 Q. All right. How many --</p> <p>3 A. There's another one somewhere, I</p> <p>4 believe.</p> <p>5 Q. Okay. Further on in that</p> <p>6 document, there is a letter dated September 2nd,</p> <p>7 2014. Do you recognize that document?</p> <p>8 A. I do.</p> <p>9 Q. Was it submitted to the Department</p> <p>10 as part of the permit application?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. Okay. And who was that document</p> <p>13 from?</p> <p>14 A. Who constructed it?</p> <p>15 Q. Who is it from? What agency?</p> <p>16 A. The City of Dothan, care of CDG</p> <p>17 Engineering [verbatim] & Associates.</p> <p>18 Q. That's who it was addressed to.</p> <p>19 Who --</p> <p>20 A. Sure. Oh, who is it from? I'm</p> <p>21 sorry. The Department of -- the Department of</p> <p>22 the Army, U.S. Army Corps of Engineers.</p> <p>23 Q. Okay. And what was the purpose of</p>	<p>1 A. Issue? Yes. It needed to be</p> <p>2 addressed, yes.</p> <p>3 Q. Okay. And this Preliminary</p> <p>4 Jurisdictional Determination is signed by James</p> <p>5 S. Cherry, Project Manager with the Corps of</p> <p>6 Engineers?</p> <p>7 A. Sure, yes.</p> <p>8 Q. And the finding in this</p> <p>9 determination was that in a 100-acre parcel,</p> <p>10 there are wetlands and streams, correct?</p> <p>11 A. Yeah, I believe so.</p> <p>12 Q. And the parcel where the landfill</p> <p>13 expansion -- landfill expansion is, is not 100</p> <p>14 acres, is it?</p> <p>15 A. I don't believe so, no.</p> <p>16 Q. It's 20.6 acres, right?</p> <p>17 A. Correct.</p> <p>18 Q. So where were the 100 acres that</p> <p>19 the Corps of Engineers was reviewing?</p> <p>20 A. I have no idea.</p> <p>21 Q. Was that information provided to</p> <p>22 the Department?</p> <p>23 A. It was -- not that I can recall.</p>

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<p>1 Q. All right. Let's turn to Exhibit 2 J-9. Do you recognize Exhibit J-9? 3 A. Yes. 4 Q. And what is Exhibit J-9? 5 A. It is the Joint Public Notice from 6 the Department of the Army Corps of Engineers. 7 Q. And who is it -- who are the joint 8 people that noticed that document? 9 A. The U.S. Army Corps of Engineers 10 and the State of Alabama Department of 11 Environmental Management. 12 Q. And was that document provided to 13 you by somebody? 14 A. At what time? 15 Q. Was it submitted by the -- 16 A. Yes, yes. 17 Q. The City of Dothan? 18 A. Yes. 19 Q. As part of their permit 20 application? 21 A. Yes. 22 Q. Okay. Let's -- does that -- at 23 this point, the City is -- or excuse me -- the</p>	<p>1 Q. Does that appear to be what it is? 2 A. I think -- I believe so, yes. 3 Q. And what is the hatched area that 4 extends from the lower left of that area to the 5 middle half of the right side of the -- of that 6 area? 7 A. The legend shows it is the Impact 8 Area. 9 Q. Impact area of what? Doesn't say? 10 A. Does not say. 11 Q. Does it say more than just "Impact 12 Area"? 13 A. 2.25 acres, yes. 14 Q. 2.25 acres? Now, what does the 15 2.5 -- 2.25 acres represent? 16 A. It doesn't really state what it 17 actually represents. 18 Q. Okay. Is it -- from the Table 19 that's on the map, does it suggest -- oh, excuse 20 me. 21 MR. LUDDER: What number are we on? 22 Ps? 23 COURT REPORTER: 4. I have P-3.</p>
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<p>1 Corps of Engineers is proposing a permit, 2 correct? 3 A. Correct. 4 Q. To do what? 5 A. The applicant is seeking 6 authorization for the discharge of fill material 7 into 2.30 acres of wetlands and an unnamed 8 tributary to Golf Creek. 9 Q. All right. Now, is there a map 10 associated with that document? 11 A. I believe so. Yes. 12 Q. Let me show you the map titled, 13 Figure 5: Proposed Impact Map. Do you 14 recognize that? 15 A. Yes. 16 Q. Did you review that document? 17 A. Yes. 18 Q. As part of the permit application? 19 A. Yes. 20 Q. And is the area bounded [verbatim] 21 in a black line the -- essentially the boundary 22 of the proposed landfill expansion? 23 A. It is not listed as -- that it is.</p>	<p>1 So you're on 4. 2 BY MR. LUDDER: 3 Q. Let me show you what's been marked 4 as Exhibit P-4, and that's a color print of the 5 same map that you're looking at in J-3, correct? 6 A. Uh-huh. It looks to be, yes. 7 Q. Given this color, can you tell 8 what the green area is on that map? 9 A. Yes. This states it is the 10 wetlands, which is 4.37 acres. 11 Q. 4.37 acres? You have to speak up 12 so the Hearing Officer can hear you. 13 A. Oh, I'm sorry. Yes, 4.37 acres. 14 Q. All right. And the hatched area 15 on that map represents what? 16 A. The impact area, which is 2.25 17 acres. 18 Q. All right. Now, by "impact area," 19 is that the area where the City desires to fill? 20 A. The map doesn't really state. 21 Q. All right. Do you know -- have 22 you seen the Corps of Engineers' permit for this 23 site?</p>

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<p>1 A. The Corps of Engineers' permits?</p> <p>2 Q. Yes.</p> <p>3 A. I think so. I believe so. I</p> <p>4 believe it was -- it came in later on, not in</p> <p>5 this application though.</p> <p>6 Q. It was not in the application?</p> <p>7 A. Not in the actual application.</p> <p>8 MR. LUDDER: Okay. Are you getting</p> <p>9 all those?</p> <p>10 COURT REPORTER: I'm sorry?</p> <p>11 MR. LUDDER: Are you getting all</p> <p>12 his words?</p> <p>13 COURT REPORTER: I'm getting his</p> <p>14 words.</p> <p>15 BY MR. LUDDER:</p> <p>16 Q. All right. The -- what's shown as</p> <p>17 the impact area basically crosses the landfill</p> <p>18 expansion area, which, here is outlined in a red</p> <p>19 line.</p> <p>20 A. Uh-huh (affirmative response).</p> <p>21 Q. The impact area extends from the</p> <p>22 lower left corner of the expansion boundary to</p> <p>23 the middle of the right side of the expansion</p>	<p>1 purple line, I guess, crossing through part of</p> <p>2 the green area, and that's identified as what?</p> <p>3 A. Intermittent.</p> <p>4 Q. Intermittent?</p> <p>5 A. Uh-huh (affirmative response.)</p> <p>6 Q. And do you understand that to be</p> <p>7 part of a stream?</p> <p>8 A. Yes.</p> <p>9 Q. And the impact area covers both</p> <p>10 wetlands and streams, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And the chart at the bottom</p> <p>13 indicates how many acres of wetlands will be</p> <p>14 impacted?</p> <p>15 A. 2.25 acres.</p> <p>16 Q. And how many linear feet of</p> <p>17 streams?</p> <p>18 A. 1,160.</p> <p>19 MR. LUDDER: I move the admission</p> <p>20 of P-4.</p> <p>21 HEARING OFFICER: Is this P-4?</p> <p>22 MR. LUDDER: P-4.</p> <p>23 HEARING OFFICER: It's admitted.</p>
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<p>1 boundary. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. So in that area, would you agree</p> <p>4 that there are both wetlands and streams that</p> <p>5 are jurisdictional to the Corps of Engineers?</p> <p>6 A. I don't see where it states,</p> <p>7 "streams," but I do see where it says,</p> <p>8 "wetlands."</p> <p>9 Q. All right. Do you see a yellow</p> <p>10 line passing through part of that green area?</p> <p>11 A. I guess I do, yes.</p> <p>12 Q. All right. And you see in the</p> <p>13 legend --</p> <p>14 A. Got you, yes.</p> <p>15 Q. -- they've identified what?</p> <p>16 A. I'm not sure even how to pronounce</p> <p>17 that.</p> <p>18 Q. Ephemeral?</p> <p>19 A. Ephemeral, yes.</p> <p>20 Q. And do you -- do you understand</p> <p>21 that to be a stream?</p> <p>22 A. Yes.</p> <p>23 Q. And there's a red line -- or a</p>	<p>1 (Exhibit No. P-4 was admitted</p> <p>2 into evidence.)</p> <p>3 MR. LUDDER: We haven't used P-5</p> <p>4 yet, have we?</p> <p>5 COURT REPORTER: That document.</p> <p>6 MR. LUDDER: It's just the one</p> <p>7 chapter.</p> <p>8 BY MR. LUDDER:</p> <p>9 Q. All right. Now, let me show you</p> <p>10 what's marked as Exhibit P-6. Do you recognize</p> <p>11 that?</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It is part of our regulations.</p> <p>15 Q. All right. And does it have a</p> <p>16 chapter number to it?</p> <p>17 A. Yes. It's Chapter 335-13-4.</p> <p>18 Q. Okay. Would you turn to</p> <p>19 335-13-4-.01? Turn to that rule, please.</p> <p>20 A. I'm on it.</p> <p>21 Q. Okay. All right. Okay. And look</p> <p>22 at Paragraph (2)(c).</p> <p>23 A. Okay. (2)(c)?</p>

<p style="text-align: right;">Page 237</p> <p>1 Q. (2)(c). That's paren 2, paren C. 2 A. Oh, paren. (2)(c), okay. 3 Q. Okay. Let me -- let's refer to 4 paren 2 first. What's the title of that 5 section? 6 A. Water Quality Standards. 7 Q. And paren c, within paren 2, 8 refers to Wetlands, does it not? 9 A. Yes. 10 Q. What does it say? 11 A. It says, Landfill units including 12 buffer zones shall not be permissible in 13 wetlands, beaches or dunes. 14 Q. All right. Did you author that 15 rule? 16 A. No. 17 Q. Was that rule in existence before 18 you commenced work for the Solid Waste Branch? 19 A. Yes. 20 Q. Are you aware of any guidance, 21 written guidance, the Department has issued with 22 respect to that rule? 23 A. Not that I'm aware of.</p>	<p style="text-align: right;">Page 239</p> <p>1 Q. Okay. Other than that, are you 2 aware of any interpretations of that section, 3 written interpretations of that section? 4 A. No. 5 Q. Let me now ask you to look 6 at -- oh, that's the -- look at Rule 7 335-13-4-.01, and just read the second sentence, 8 please. 9 A. As part of the application, the 10 owner/operator must submit documentation 11 addressing, to the satisfaction of the 12 Department, the following siting standards. 13 Q. And the siting standards, 14 they're -- they are referring to include the 15 rules that we were just talking about regarding 16 wetlands, correct? 17 A. That does include, yes. 18 Q. Now, let me refer you to Rule 19 335-13-4-.11. The title of that is, General 20 Design Standards for Disposal Facilities. 21 Did you find that? 22 A. Yes. 23 Q. Now, in Paragraph 1, would you</p>
<p style="text-align: right;">Page 238</p> <p>1 Q. Are you aware of any written 2 policies the Department has issue with respect 3 to that rule? 4 A. No. 5 Q. Are you aware of any written 6 interpretations that the Department has prepared 7 with respect to that rule? 8 A. Sure. 9 Q. Written interpretation? 10 A. Written -- well, it's -- depending 11 on how you interpret "landfill units." 12 Q. You have seen written 13 interpretations of landfill units? 14 A. Not written interpretations. I 15 guess not, no. 16 Q. Okay. Have you seen written 17 interpretations of -- about wetlands? 18 A. Yes. There is -- well, they have 19 definitions of each of those words, actually. 20 Q. Okay. So what you're saying is 21 the interpretations of landfill units and 22 wetlands are defined somewhere in the rules? 23 A. And also the regulations, yes.</p>	<p style="text-align: right;">Page 240</p> <p>1 just read the text of that? 2 A. It is, General Standards. It's, 3 335-13-4-.12 through 335-13-4-.20 provides 4 standard for establishing a landfill unit 5 providing that the siting standards of 6 335-13-4-.01 have been fully complied with 7 to the satisfaction of the Department. Certain 8 requirements contained in 335-13-4-.01 through 9 335-13-4-.20 may be enhanced or reduced by the 10 Department as deemed necessary to comply with 11 the Act and this Division. 12 Q. All right. They do use the 13 terms -- or they do suggest -- this rule does 14 state that the siting standards have to be fully 15 complied with to the satisfaction of the 16 Department before the design standards can be 17 met, correct? 18 A. I don't think it says that. 19 Q. Okay. All right. If the 20 Commission decides that the landfill expansion 21 cannot be located where the wetlands and the 22 stream -- streams are on Exhibit P-4, what will 23 that do to the proposed landfill expansion?</p>

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<p>1 A. We would -- basically, we'd 2 probably have to go back to the City to submit 3 more drawings and to put that part out. 4 Q. All right. And so it's possible 5 that they could come back with new drawings, 6 showing a landfill expansion to the north of the 7 wetlands and the streams and possibly to the 8 south? 9 A. Yes, yes. If that's what they 10 would like to do. 11 Q. Right, okay. And that would 12 significantly reduce the size of the landfill, 13 correct? The acreage that would be devoted to 14 waste? 15 A. I think it looks like it might, 16 maybe, cut it in half. 17 Q. Okay. And if the size of the area 18 where waste can be disposed of is reduced, would 19 that mean that the active life of the landfill 20 would also be reduced? 21 A. I would assume so, yes. 22 Q. All right. Let me ask you to look 23 at Rule 335-13-1 -- I'm sorry -- -4-.01 (2)(a).</p>	<p>1 1975, 22-22-1 to 22-22-14 and/or section 404 of 2 the Clean Water Act, as amended. 3 Q. All right. Now, that rule refers 4 to, Waters of the State. Is that a defined 5 term? 6 A. I'm really not familiar 7 with -- this is more of our, you know, our water 8 quality, our water section of ADEM. They deal 9 more with the NPDES than these. 10 Q. Well, the waters of the State 11 doesn't refer to NPDES. 12 MR. WHITE: Objection. 13 HEARING OFFICER: I'm sorry -- 14 MR. WHITE: It's not a question. 15 HEARING OFFICER: All right. 16 Rephrase it for me, Mr. Ludder. 17 BY MR. LUDDER: 18 Q. Does the waters of the State refer 19 to the NPDES program? 20 A. Does it refer to them? 21 Q. Yeah. Does that term -- is it 22 qualified by the National Pollutant Discharge 23 Elimination System?</p>
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<p>1 Did you find that? 2 A. I believe so. 3 Q. All right. No, that's .11. .01. 4 A. .01? Oh, I'm sorry. I got ahead 5 of myself. (2)(a), yeah. 6 Q. (2)(a). All right. So you 7 already testified that Paragraph (2) in that 8 rule relates to water -- or has a title relating 9 to water quality standards, correct? 10 A. Correct. 11 Q. And would you read Paragraph (2) 12 (a)? 13 A. A facility shall not cause a 14 discharge of pollutants into waters of the 15 State, including wetlands, that is in violation 16 of the requirements of the National Pollution 17 [verbatim] Discharge Elimination System (NPDES), 18 Alabama Water Pollution Control Act, Code of 19 Alabama -- would you like me to read the rest of 20 it? Just the codes? 21 Q. Yeah, go ahead and finish reading 22 it. 23 A. Sure. The Code of Alabama of</p>	<p>1 A. I think so. 2 Q. Let me withdraw the question. 3 Let me show you... 4 MR. WHITE: Oh, sorry. 5 MR. LUDDER: That's mine. 6 MR. WHITE: Okay. 7 MR. LUDDER: I just want you to 8 know what I'm looking at. 9 MR. WHITE: 35. Thank you. 10 BY MR. LUDDER: 11 Q. Okay. Let me show you what's been 12 marked for identification as Exhibit P-7 and ask 13 you if you can identify that. 14 A. It is our regulations, the Chapter 15 335-13-1. 16 Q. And does 335-13-1-.02 -- I'm 17 sorry -- .03 refer to, Definitions? 18 A. It does. 19 Q. And can you tell me if there's a 20 definition of "waters of the State" in there? 21 A. Sure. 22 (The Witness examined the 23 document.)</p>

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<p>1 A. Yes.</p> <p>2 Q. Is there also a definition of</p> <p>3 "wetlands" in there?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And those are the</p> <p>6 regulations that you and the Solid Waste Branch</p> <p>7 are supposed to implement when you review</p> <p>8 applications, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Now, back to 335-13-4-.01 paren 2</p> <p>11 a, which is in Exhibit P-6, it says, A facility</p> <p>12 shall not cause a discharge of pollutants into</p> <p>13 waters of the State.</p> <p>14 And it goes on. But up to that point, the</p> <p>15 waters of the State in that rule are -- is the</p> <p>16 defined term "waters of the State," isn't it?</p> <p>17 A. Correct.</p> <p>18 Q. It goes on to say, Including</p> <p>19 wetlands.</p> <p>20 And that's a defined term, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And then it says, Is in violation</p> <p>23 of the requirements of the National Pollutant</p>	<p>1 Q. Did you leave that to somebody</p> <p>2 else to review?</p> <p>3 A. Yes.</p> <p>4 Q. Who?</p> <p>5 A. That was our NPDES section.</p> <p>6 Q. Did the City of Dothan apply to</p> <p>7 them for any kind of permits?</p> <p>8 A. I believe so.</p> <p>9 Q. Did you forward this application</p> <p>10 to the NPDES people up in ADEM?</p> <p>11 A. I did not.</p> <p>12 Q. Are you aware of it being reviewed</p> <p>13 by them?</p> <p>14 A. Yes.</p> <p>15 Q. Who reviewed it?</p> <p>16 A. I do not know.</p> <p>17 Q. Do you know when they reviewed it?</p> <p>18 A. I believe it was before I received</p> <p>19 the actual application for the solid waste</p> <p>20 permit.</p> <p>21 Q. Before what?</p> <p>22 A. Before I received the</p> <p>23 solid -- solid waste application.</p>
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<p>1 Discharge Elimination System.</p> <p>2 What is that?</p> <p>3 A. What is the NPDES?</p> <p>4 Q. Right.</p> <p>5 A. They're in charge of, you know,</p> <p>6 discharges into the waters of the State.</p> <p>7 Q. And who is "they"?</p> <p>8 A. I would assume us, ADEM.</p> <p>9 Q. All right. Do you know -- do you</p> <p>10 know what the National Pollutant Discharge</p> <p>11 Elimination System is?</p> <p>12 A. A little bit, yes. Like I said,</p> <p>13 this is out of my realm of work, mostly.</p> <p>14 Q. Okay. And then there's a comma,</p> <p>15 and it says Alabama Water Pollution Control Act.</p> <p>16 Did you look at the Alabama Water Pollution</p> <p>17 Control Act when you reviewed compliance with</p> <p>18 this rule?</p> <p>19 A. No.</p> <p>20 Q. Did you look at the National</p> <p>21 Pollutant Discharge Elimination System to</p> <p>22 determine compliance with this rule?</p> <p>23 A. No.</p>	<p>1 Q. All right. Are you referring to a</p> <p>2 permit to discharge fill material into wetlands</p> <p>3 and streams?</p> <p>4 A. I believe you asked about NPDES</p> <p>5 and my -- are you asking me -- what are you</p> <p>6 asking? I'm sorry.</p> <p>7 Q. Okay. What -- what activity at</p> <p>8 the proposed landfill expansion was reviewed by</p> <p>9 ADEM under the NPDES system?</p> <p>10 A. Oh, I have no idea. Like I said,</p> <p>11 this was somebody else.</p> <p>12 Q. Okay. And does that go the same</p> <p>13 for the Alabama Water Pollution Control Act?</p> <p>14 You left it entirely to somebody else to review?</p> <p>15 A. Correct.</p> <p>16 Q. And you yourself didn't</p> <p>17 investigate or didn't make an inquiry to anybody</p> <p>18 at ADEM about whether this proposed landfill</p> <p>19 expansion complies with the Alabama Water</p> <p>20 Pollution Control Act?</p> <p>21 A. Initially?</p> <p>22 Q. At any time between receiving the</p> <p>23 application to final permit issuance?</p>

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<p>1 A. Oh, yes, yes.</p> <p>2 Q. Who did you make that inquiry to?</p> <p>3 A. That's just to the Department in</p> <p>4 general -- I mean, to their section in general.</p> <p>5 We just made sure they had everything in place.</p> <p>6 Q. Did you make an inquiry as to</p> <p>7 whether it complied? Whether this proposed</p> <p>8 landfill expansion complies with the Alabama</p> <p>9 Water Pollution Control Act?</p> <p>10 A. I didn't receive [verbatim] that</p> <p>11 it didn't.</p> <p>12 Q. I'm sorry?</p> <p>13 A. I did not receive [verbatim] that</p> <p>14 it did not comply.</p> <p>15 Q. You did not receive a response</p> <p>16 from them?</p> <p>17 A. Stating that they did not.</p> <p>18 Q. Did you receive a response from</p> <p>19 them that it does comply?</p> <p>20 A. I'm trying to -- they might have</p> <p>21 already -- I believe the NPDES might have</p> <p>22 actually been in the application. I'm not sure</p> <p>23 of that either.</p>	<p>1 the National Pollutant Discharge Elimination</p> <p>2 System?</p> <p>3 A. That's what I don't know. I don't</p> <p>4 know as far as what they received, off the top</p> <p>5 of my head.</p> <p>6 Q. No, I'm talking about what -- did</p> <p>7 you receive a response --</p> <p>8 A. No.</p> <p>9 Q. -- from the Water Division, that</p> <p>10 this proposal complies with the National</p> <p>11 Pollutant Discharge Elimination System?</p> <p>12 A. I did not receive a response.</p> <p>13 Q. Now, you said you made an inquiry</p> <p>14 to somebody about compliance with this rule,</p> <p>15 335-13-4-.01 paren 2 a.</p> <p>16 Did you document that inquiry?</p> <p>17 A. No. I guess I misspoke there.</p> <p>18 It's mainly -- we received copies which could</p> <p>19 come from secretaries of the actual permitting.</p> <p>20 Q. You received copies of what?</p> <p>21 A. Of -- if it permitted -- NPDES.</p> <p>22 Q. If there was an NPDES permit</p> <p>23 issued having something to do with this</p>
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<p>1 Q. Okay. And you're talking about --</p> <p>2 A. I'm not sure about the actual</p> <p>3 process. I know sometimes we receive the NPDES</p> <p>4 permits for the application. I'm not sure if</p> <p>5 with this actual one we did or not, initially,</p> <p>6 the general permit.</p> <p>7 Q. A general permit?</p> <p>8 A. Yeah.</p> <p>9 Q. A general NPDES permit?</p> <p>10 A. Yes.</p> <p>11 Q. You think was part of the</p> <p>12 application?</p> <p>13 A. That is -- I'm not sure.</p> <p>14 Q. Okay. You're not sure? Okay.</p> <p>15 Did you receive any response from the Water</p> <p>16 Division or anybody in the Water Division, or</p> <p>17 the NPDES program, that they signed off on this</p> <p>18 landfill expansion permit that Solid Waste was</p> <p>19 going to issue?</p> <p>20 A. No.</p> <p>21 Q. Did you receive any response from</p> <p>22 the Water Division or the NPDES program that</p> <p>23 this landfill expansion was going to comply with</p>	<p>1 facility --</p> <p>2 A. Yes.</p> <p>3 Q. -- you would receive a copy of</p> <p>4 it?</p> <p>5 A. Yeah, either from -- in the</p> <p>6 application or sometime later, if needed.</p> <p>7 Q. Okay. Do you know if -- but you</p> <p>8 don't know if that -- if you actually did</p> <p>9 receive that; is that correct?</p> <p>10 A. I do not know.</p> <p>11 Q. Let me refer you to Exhibit J-1.</p> <p>12 MR. LUDDER: I'm going to move the</p> <p>13 admission, Your Honor, of Exhibits P-6</p> <p>14 and P-7.</p> <p>15 HEARING OFFICER: P-6 and P-7?</p> <p>16 MR. LUDDER: Correct.</p> <p>17 MR. WHITE: No objection.</p> <p>18 MR. CARTER: No objection.</p> <p>19 HEARING OFFICER: They're admitted.</p> <p>20 (Exhibits No. P-6 & P-7 were</p> <p>21 collectively admitted into</p> <p>22 evidence.)</p> <p>23 MR. LUDDER: And I did move P-4,</p>

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<p>1 correct?</p> <p>2 HEARING OFFICER: P-4's already in</p> <p>3 here.</p> <p>4 MR. LUDDER: Right. Okay.</p> <p>5 BY MR. LUDDER:</p> <p>6 Q. All right. Let's look at Exhibit</p> <p>7 J-1. Do you recognize that document?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. It is our cover letter -- cover</p> <p>11 letter to the City, which states that their</p> <p>12 permit is enclosed.</p> <p>13 Q. And attached to that document is</p> <p>14 what?</p> <p>15 A. It is the permit.</p> <p>16 Q. And preceding the permit is what?</p> <p>17 A. Final Determination and a permit</p> <p>18 cover sheet.</p> <p>19 Q. And all the permit terms that</p> <p>20 follow that, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And that goes to Pages 14 of 14?</p> <p>23 A. Yes.</p>	<p>1 address municipal waste landfills, C&D</p> <p>2 landfills, all landfills? Is it restricted to</p> <p>3 anything like that?</p> <p>4 A. I believe it is -- I don't believe</p> <p>5 it -- it specifies with that one. But there is</p> <p>6 another one.</p> <p>7 Q. Okay. Well, let's look at that</p> <p>8 one first.</p> <p>9 A. Which one?</p> <p>10 Q. The one you were just at.</p> <p>11 A. Okay.</p> <p>12 Q. 335-4-.15 [verbatim] refers to</p> <p>13 cover. And you don't believe that that rule</p> <p>14 specifies any particular type of landfill,</p> <p>15 correct?</p> <p>16 A. No.</p> <p>17 Q. So it essentially applies to all</p> <p>18 landfills; is that right?</p> <p>19 A. I believe so.</p> <p>20 Q. Okay.</p> <p>21 (The Witness examined the</p> <p>22 document.)</p> <p>23 A. Yes, yeah.</p>
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<p>1 Q. So that's the final permit that</p> <p>2 was issued to allow the permit expansion,</p> <p>3 correct?</p> <p>4 A. Correct.</p> <p>5 Q. If you would, turn to Section III</p> <p>6 H of the permit on Page 8. Now, what does the</p> <p>7 first sentence of that section say?</p> <p>8 A. The Permittee shall cover all</p> <p>9 wastes as required by 335-13.</p> <p>10 Q. Okay. And do you know what 335-13</p> <p>11 requires of cover?</p> <p>12 A. Not off the top of my head. I can</p> <p>13 read it to you.</p> <p>14 Q. All right. I once again show you</p> <p>15 Exhibit P-6. See if you can find the section</p> <p>16 dealing with cover material.</p> <p>17 A. There's actually several, I</p> <p>18 believe.</p> <p>19 Q. Right.</p> <p>20 A. I'll start with -- what was it?</p> <p>21 335-13-4-.15, the cover?</p> <p>22 Q. Now, first off, before you read</p> <p>23 any more, does the section -- does that section</p>	<p>1 Q. You confirmed that? Is</p> <p>2 that -- you confirmed that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And does that rule suggest</p> <p>5 that -- or state that -- no.</p> <p>6 Does that rule state anything about the</p> <p>7 type of cover material that will be used at the</p> <p>8 landfill?</p> <p>9 A. Yes.</p> <p>10 Q. What does it say?</p> <p>11 A. It says, Any proposal to use</p> <p>12 alternate cover systems shall be submitted to</p> <p>13 the -- submitted to and approved by the</p> <p>14 Department prior to</p> <p>15 implementation -- implementation.</p> <p>16 Q. All right. And without an</p> <p>17 approval to use an alternate cover material,</p> <p>18 does this rule specify what has to be used?</p> <p>19 A. No.</p> <p>20 Q. Okay. Let's turn to the rule then</p> <p>21 on municipal waste landfills. 335-13-4-.22,</p> <p>22 Specific Requirements for Municipal Solid Waste</p> <p>23 Landfills. You might be able to find it faster</p>

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<p>1 than me. There you go. All right. Paragraph 2 (1)(a)1, does that rule specify what's to be 3 used if the landfill is not using an alternative 4 cover? 5 A. Yes. Well, it says, Or. 6 Q. Okay. And what does it say has to 7 be used? 8 A. Well, it states, A minimum of six 9 inches of compacted earth or other alternative 10 cover material. 11 Q. Okay. Now, if the Commission 12 decides that alternative cover material can't be 13 used at this landfill, what cover material has 14 to be used? 15 A. I don't believe it -- I mean, they 16 only have "earth" as what they can use other 17 than any other alternative approved by... 18 Q. Okay. What does -- we looked at 19 the permit earlier, and it said, Comply with 20 division -- 21 MR. WHITE: Object. 22 Q. -- we looked at Exhibit J-1 23 earlier, and I believe you read it, and it read</p>	<p>1 BY MR. LUDDER: 2 Q. Okay. Go ahead and read that 3 first sentence again. 4 A. The Permittee shall cover all 5 wastes as required by 335-13. 6 Q. All right. Now, the rule that you 7 just read in 335-13-4-.22 is part of 335-13, 8 correct? 9 A. Yes. 10 Q. So the permit authorizes -- or the 11 permit requires then to comply with 335-13-4-.22 12 paren 1(a)1, correct? 13 A. Yes. 14 Q. And (1)(a)1 provides for 15 alternative cover material if approved, correct? 16 A. And is approved, yes. 17 Q. The permit doesn't -- does not 18 prohibit the City of Dothan from using 19 alternative cover material, does it? The permit 20 itself? 21 A. Does it prohibit? 22 Q. Does the permit prohibit the City 23 of Dothan from using alternate cover material?</p>
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<p>1 that the -- 2 MR. WHITE: I'm going to object. 3 Counsel is testifying. 4 HEARING OFFICER: Ask him again, 5 Mr. Ludder. I know what you're trying 6 to do. Go ahead and ask it. 7 MR. LUDDER: Yeah. 8 BY MR. LUDDER: 9 Q. All right. Exhibit J-1, Section 10 VIII [verbatim], we discussed before, Cover 11 Requirements? 12 A. Uh-huh (affirmative response). 13 Q. And it says they have to comply -- 14 MR. WHITE: I'm going to object, 15 Judge. I mean, what we're doing here 16 is asking questions and not 17 testifying. 18 HEARING OFFICER: Well, the Witness 19 can read from it. 20 MR. WHITE: If he asks him to read 21 it, then -- 22 HEARING OFFICER: Go ahead and read 23 it.</p>	<p>1 A. Yes, it does. 2 Q. Where does it say that? 3 A. Well, we haven't approved any 4 other type of cover material. 5 Q. Well, the question was: Does the 6 permit prohibit using alternate cover -- 7 MR. WHITE: I'm going to object. 8 He answered the question. He said 9 that the permit does not approve any 10 alternate cover. 11 HEARING OFFICER: Overruled. 12 MR. LUDDER: He didn't say that. 13 He didn't say that. 14 BY MR. LUDDER: 15 Q. Does the permit prohibit the use 16 of alternate cover -- 17 MR. WHITE: I object -- I object. 18 He answered the question. 19 HEARING OFFICER: Overruled. 20 A. We have not approved any other 21 cover, alternate daily cover. 22 Q. Answer the question. Does it 23 prohibit the use of alternate cover material?</p>

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<p>1 A. Yes.</p> <p>2 MR. WHITE: I'm going to object,</p> <p>3 Judge. He's answered.</p> <p>4 Q. And --</p> <p>5 HEARING OFFICER: Did you say, Yes?</p> <p>6 THE WITNESS: I did, I'm sorry.</p> <p>7 Yes.</p> <p>8 HEARING OFFICER: Okay.</p> <p>9 BY MR. LUDDER:</p> <p>10 Q. And you base that on what?</p> <p>11 A. That it states that it has to be</p> <p>12 approved by the Department, and we have not</p> <p>13 approved any other alternative cover.</p> <p>14 Q. Okay. Does it authorize the use</p> <p>15 of alternative cover material? Does the permit</p> <p>16 authorize the use of cover material?</p> <p>17 A. No. Of alternate cover material?</p> <p>18 Q. Right.</p> <p>19 A. No.</p> <p>20 Q. How are approvals of alternate</p> <p>21 cover material handled by the Department -- let</p> <p>22 me withdraw that.</p> <p>23 How does an applicant seek permission from</p>	<p>1 relevancy.</p> <p>2 HEARING OFFICER: Overruled.</p> <p>3 BY MR. LUDDER:</p> <p>4 Q. Has the Department ever granted a</p> <p>5 request for alternate cover material without</p> <p>6 modifying a permit?</p> <p>7 MR. WHITE: Same objection.</p> <p>8 HEARING OFFICER: Same ruling.</p> <p>9 A. That's -- that's hard for me to</p> <p>10 answer.</p> <p>11 Q. In your experience, you don't</p> <p>12 know?</p> <p>13 A. In -- yes, in my experience, I do</p> <p>14 not know.</p> <p>15 Q. Okay. In any of the landfills</p> <p>16 that you have worked on permits before, have you</p> <p>17 ever granted alternate cover -- alternate cover</p> <p>18 material use?</p> <p>19 A. Yes.</p> <p>20 Q. Which landfill was that?</p> <p>21 A. There's multiple.</p> <p>22 Q. Multiple ones?</p> <p>23 A. Yes.</p>
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<p>1 the Department to use an alternative cover?</p> <p>2 A. They would request permission</p> <p>3 either, you know, by itself or with a renewal or</p> <p>4 modification, or anything like that.</p> <p>5 Q. And by "anything like that," is it</p> <p>6 sufficient if the applicant merely submits an</p> <p>7 e-mail request to use alternate cover material?</p> <p>8 A. No, not basically -- not</p> <p>9 typically.</p> <p>10 Q. If a -- if a solid waste facility</p> <p>11 has a current permit that says nothing about the</p> <p>12 use of alternative cover material, can they just</p> <p>13 merely submit an e-mail to the Department saying</p> <p>14 or asking for permission to use an alternate</p> <p>15 cover material?</p> <p>16 MR. WHITE: Judge, I'm going to --</p> <p>17 A. No.</p> <p>18 MR. WHITE: -- object on the</p> <p>19 grounds of relevance here. I mean,</p> <p>20 we're talking about a hypothetical</p> <p>21 scenario that is irrelevant to this</p> <p>22 application and this appeal. So I'm</p> <p>23 going to object on grounds of</p>	<p>1 Q. And all those were done</p> <p>2 as -- during the permit process?</p> <p>3 A. Not necessarily, no. They...</p> <p>4 Q. Could you describe when they were</p> <p>5 done?</p> <p>6 A. I'm sorry. Describe the permit</p> <p>7 process, I guess?</p> <p>8 Q. Yeah, I mean, was it a</p> <p>9 applic -- was it in the process of applying for</p> <p>10 a revision for a permit?</p> <p>11 A. Yes.</p> <p>12 Q. And so the authorization to use an</p> <p>13 alternate cover would have been addressed in the</p> <p>14 permit itself, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Not in a separate document, like,</p> <p>17 a letter approval?</p> <p>18 A. I believe, initially, that was how</p> <p>19 it was done.</p> <p>20 Q. How what was done?</p> <p>21 A. How we approved the...</p> <p>22 COURT REPORTER: I'm sorry. One</p> <p>23 more time?</p>

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<p>1 THE WITNESS: I'm sorry.</p> <p>2 A. Initially, we issued a letter</p> <p>3 approving the Permittee of a variance.</p> <p>4 Q. All right. So you consider that</p> <p>5 to be a variance?</p> <p>6 A. Yes.</p> <p>7 Q. And does the Department do that</p> <p>8 anymore? Does it -- do they authorize alternate</p> <p>9 cover by letter approval anymore?</p> <p>10 A. No, but we'd also modify the</p> <p>11 permit as well, or make adjustments whereas</p> <p>12 needed.</p> <p>13 Q. Well, would you authorize</p> <p>14 alternate cover -- alternate -- authorize the</p> <p>15 use of alternate cover material before the</p> <p>16 permit was revised to authorize it?</p> <p>17 MR. WHITE: I'm sorry. I don't</p> <p>18 understand the question. Can you</p> <p>19 rephrase that?</p> <p>20 MR. LUDDER: Sure.</p> <p>21 BY MR. LUDDER:</p> <p>22 Q. Do you know if the Department</p> <p>23 would ever issue a letter approval, as you said</p>	<p>1 this facility, I assume that you also reviewed</p> <p>2 the applicable regulations, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And when you reviewed -- or did</p> <p>5 you review whether this application complies</p> <p>6 with 335-13-4-.22 paren 1(a)1?</p> <p>7 A. Yes.</p> <p>8 Q. And during that review, did you</p> <p>9 consider whether the authorization in that rule</p> <p>10 for alternate cover material was valid? Whether</p> <p>11 the rule was, in fact, a valid rule?</p> <p>12 A. I'm sorry. Repeat that.</p> <p>13 MR. CARTER: Objection, Your Honor.</p> <p>14 I mean, that's -- he's asking him if</p> <p>15 he thought the rule was a valid rule.</p> <p>16 MR. LUDDER: No, I asked him if he</p> <p>17 investigated.</p> <p>18 MR. SASSER: He didn't.</p> <p>19 HEARING OFFICER: Sustained. You</p> <p>20 can offer evidence that -- if it's</p> <p>21 invalid, you can offer evidence, but</p> <p>22 whether he investigated it or not...</p> <p>23 BY MR. LUDDER:</p>
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<p>1 they have in the past, for alternate cover?</p> <p>2 Would they do that and follow it with a revision</p> <p>3 to the permit to authorize cover -- alternate</p> <p>4 cover?</p> <p>5 A. I don't remember how they actually</p> <p>6 did it.</p> <p>7 Q. But in every instance that you</p> <p>8 know of a -- that a letter was issued, there was</p> <p>9 also a permit revision; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. But you don't know if those were</p> <p>12 simultaneous, correct?</p> <p>13 MR. WHITE: Judge, I'm going to</p> <p>14 object. We've indulged this line of</p> <p>15 questions on hypotheticals and other</p> <p>16 cases, you know, long enough. We are</p> <p>17 so far afield from this application</p> <p>18 that I object on relevancy grounds.</p> <p>19 HEARING OFFICER: Sustained. Let's</p> <p>20 move on.</p> <p>21 MR. LUDDER: Yeah.</p> <p>22 BY MR. LUDDER:</p> <p>23 Q. In reviewing the application for</p>	<p>1 Q. All right. Let's look at</p> <p>2 Exhibit J-1, the permit -- the final permit</p> <p>3 again, Page 9, Section J, titled, Daily Cells.</p> <p>4 That section, the last sentence of it, states</p> <p>5 that a variance has been granted for two</p> <p>6 operating faces, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And elsewhere in the permit,</p> <p>9 Section X, it discusses the variance, correct,</p> <p>10 for two working faces?</p> <p>11 A. Correct, yes.</p> <p>12 Q. Section X, Paragraph 2?</p> <p>13 A. Yes.</p> <p>14 Q. Typically, there is one working</p> <p>15 face associated with a landfill, correct?</p> <p>16 A. I wouldn't say typically.</p> <p>17 Q. So in some cases, you would</p> <p>18 authorize -- the Department has authorized two</p> <p>19 working faces?</p> <p>20 A. Yes.</p> <p>21 Q. At a -- at a single municipal</p> <p>22 waste landfill?</p> <p>23 A. Yes.</p>

<p style="text-align: right;">Page 269</p> <p>1 Q. Two working faces at a single cell 2 of a municipal waste landfill? 3 A. At one cell? 4 Q. Yes. 5 A. Possibly. I don't know -- I -- I 6 don't believe I have any. 7 Q. Okay. Does the permit specify 8 where the working faces will be located? 9 A. Yes. Well -- yes. 10 Q. Where does it say that? 11 A. Well, it just states that they 12 have an MSW and a C&D cells -- it's two 13 different cells. 14 Q. All right. Stop there. On Page 15 7, Section III is titled, Specific MSW Landfill 16 Requirements. And on Page 8 under Section III, 17 Section H, it discusses -- I'm sorry -- Section 18 J, it discusses the working faces, right? 19 A. Yes. 20 Q. So why shouldn't -- 21 A. It doesn't really -- it says, 22 Daily Cells, is what it actually says. 23 Q. I'm sorry?</p>	<p style="text-align: right;">Page 271</p> <p>1 Q. Under the permit. 2 A. No. 3 Q. Why? 4 A. Well, that's what we based our 5 decision on, letting them have two working 6 faces. 7 Q. All right. Let's clarify your 8 previous answer. In this landfill expansion 9 area, the pink area on Exhibit P-5, does the 10 permit authorize the City of Dothan to operate 11 two working faces in that landfill expansion 12 area? 13 A. No. 14 Q. And where does it say that in the 15 permit? 16 A. It doesn't state that. It just 17 states that they are approved for two working 18 faces. 19 Q. And it doesn't specify any 20 particular portion of the landfill, whether it's 21 the MSW landfill or the construction and 22 demolition landfill, does it? 23 A. I do not see it, no.</p>
<p style="text-align: right;">Page 270</p> <p>1 A. It just states Cells, Daily Cells. 2 Q. Right, right. But it's under the 3 Section III that relates to municipal solid 4 waste landfill requirements, correct? 5 A. Yes. 6 Q. And, in fact, there is no section 7 that deals with construction 8 land -- construction and demolition landfill 9 requirements, correct? Comparable to Section 10 III? 11 A. Yeah, I do not -- I don't see 12 them. 13 Q. All right. Can the City of 14 Dothan -- under the permit -- can the City of 15 Dothan operate two working faces within the 16 municipal solid waste landfill? 17 A. Yes. 18 Q. Can they -- under the 19 permit -- can they operate two working faces at 20 the construction and demolition landfill? 21 A. Can they have two faces at the 22 construction and demolition facility? Is that 23 what you're asking?</p>	<p style="text-align: right;">Page 272</p> <p>1 Q. The permit grants a variance from 2 a particular rule, doesn't it, relating to 3 working faces in Section X of the permit? 4 A. Of the rule? Is that what you're 5 saying? 6 Q. I said the permit itself grants a 7 variance from a particular rule regarding 8 working faces, correct? 9 A. Yes. 10 Q. And in that variance, they 11 authorize two working faces, correct? 12 A. Yes. 13 Q. Did the City ever provide to the 14 Department an assessment with supporting factual 15 information of the impact of that variance on 16 public health and the environment in the 17 affected area? 18 A. I didn't ask for any, I don't 19 believe. 20 Q. Did the City provide anything? An 21 assessment of -- with supporting factual 22 information -- of the impact of the variance 23 that they sought, that that impact would have on</p>

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<p>1 public health and the environment in the 2 affected area?</p> <p>3 A. Are you asking just for the 4 working faces? Or for the other --</p> <p>5 Q. Yes, just for the working faces.</p> <p>6 A. I don't believe anything was 7 changing really, except for that, except for the 8 two working faces.</p> <p>9 Q. The Department granted a variance. 10 Did the City provide an assessment with 11 supporting factual information of the impact of 12 the variance on public health and the 13 environment?</p> <p>14 A. I don't -- I don't believe I -- we 15 received any, no.</p> <p>16 Q. Okay. Did the City provide ADEM 17 with a concise factual statement of the reasons 18 it believes that noncompliance with the working 19 face requirement will not threaten public health 20 or unreasonably create environmental pollution?</p> <p>21 A. I -- I mean, I can't remember. 22 That's a huge document. I don't remember off 23 the top of my head.</p>	<p>1 Q. Did they provide a concise factual 2 statement of the reasons?</p> <p>3 A. I do not remember. I don't think 4 so. No, I don't remember. No.</p> <p>5 Q. You have no idea?</p> <p>6 A. No idea, no.</p> <p>7 Q. Okay. If they did, it would have 8 been in the permit application, correct?</p> <p>9 A. If they did, yes.</p> <p>10 Q. Now, in Exhibit P-1 [verbatim], 11 the page after the cover letter, there's a 12 document -- a one-page document called the Final 13 Determination.</p> <p>14 A. Uh-huh (affirmative response).</p> <p>15 Q. Does that Final Determination 16 include a finding that noncompliance with the 17 working face rule will not threaten the public 18 health or unreasonably create environmental 19 pollution?</p> <p>20 A. No.</p> <p>21 Q. Did the Department make that 22 finding in writing anywhere in the permit 23 determination, including the permit itself? Was</p>
Page 274	Page 276
<p>1 Q. Okay. Did the City provide in the 2 permit application a clear and complete 3 statement of the precise extent of the relief it 4 sought, including a specific identification of a 5 particular division of the regulation for which 6 a variance was sought?</p> <p>7 A. Ask that again, please.</p> <p>8 Q. Yeah.</p> <p>9 HEARING OFFICER: What was your 10 answer?</p> <p>11 THE WITNESS: Ask it again, please. 12 I didn't understand the question.</p> <p>13 BY MR. LUDDER:</p> <p>14 Q. Did the City provide a clear and 15 complete statement of the precise extent of the 16 relief sought, including specific identification 17 of the particular provisions of the regulations 18 from which the variance was sought?</p> <p>19 A. Well, then they showed they were 20 needing two -- two working faces, yes.</p> <p>21 Q. I'm sorry?</p> <p>22 A. They showed that they needed two 23 working faces, in which it was...</p>	<p>1 there a finding to that effect?</p> <p>2 A. Well, we approved the variance.</p> <p>3 Q. I understand that. But was there 4 a finding to that effect, that it will not 5 threaten public health or unreasonably create 6 environmental pollution?</p> <p>7 A. Well, we wouldn't have approved 8 the variance if there would have been. But at 9 least to our --</p> <p>10 Q. Did you make a -- did you make a 11 written finding to that effect?</p> <p>12 A. A written -- written finding? No, 13 we did not.</p> <p>14 Q. No? And, in fact, the Final 15 Determination doesn't mention any variances at 16 all, does it?</p> <p>17 A. No. That's not initial.</p> <p>18 Q. Okay. Let's refer to Exhibit P-6, 19 Rule 335-14 -- excuse me. 335-13-4-.22 paren 1, 20 (b) as in "boy."</p> <p>21 MR. WHITE: David, one more time 22 please?</p> <p>23 MR. LUDDER: 335-13-4-.22 (1)(b).</p>

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<p>1 MR. WHITE: Thank you.</p> <p>2 BY MR. LUDDER:</p> <p>3 Q. All right. Now, that rule refers</p> <p>4 to the "face slope" they call it. Do you</p> <p>5 understand what that means?</p> <p>6 A. Yes.</p> <p>7 Q. What does it mean?</p> <p>8 A. I guess that means just basically</p> <p>9 the slope face. I mean, it's -- I don't know to</p> <p>10 actually give you a definition.</p> <p>11 Q. Is it referring to the working</p> <p>12 face?</p> <p>13 A. I believe so.</p> <p>14 Q. Okay. And look at Rule</p> <p>15 335-13-4-.23, which refers to construction and</p> <p>16 demolition landfills.</p> <p>17 A. Uh-huh (affirmative response).</p> <p>18 Q. Paragraph 1(c). That includes the</p> <p>19 same slope requirement, but it doesn't seem to</p> <p>20 say "face slope," does it?</p> <p>21 A. I do not see the word "face."</p> <p>22 Q. All right. But it does refer to a</p> <p>23 four-to-one slope requirement, correct?</p>	<p>1 Q. So would it be your understanding</p> <p>2 that during the active operation of the</p> <p>3 landfill, prior to final cover, the face slope</p> <p>4 is to be four to one?</p> <p>5 A. Yes, it appears that way.</p> <p>6 Q. Okay. Now, Exhibit P-1, the</p> <p>7 permit, authorizes a variance from the final</p> <p>8 slope requirements of the rules, does it not?</p> <p>9 A. Of the final slope?</p> <p>10 Q. Right.</p> <p>11 A. Yes.</p> <p>12 Q. All right. And the rule</p> <p>13 that -- absent the variance -- is that Rule</p> <p>14 335-4-.20 [verbatim] paren c 2 in Exhibit P-6?</p> <p>15 A. Uh-huh (affirmative response).</p> <p>16 Q. Does that sound correct?</p> <p>17 A. It looks correct.</p> <p>18 Q. And that rule requires a final</p> <p>19 slope of four to one, correct? Absent of</p> <p>20 variance?</p> <p>21 A. Yes.</p> <p>22 Q. And the variance that was granted</p> <p>23 was for what slope?</p>
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<p>1 A. Correct.</p> <p>2 Q. As did the previous rule,</p> <p>3 335-13-4-.22 (1)(b). That referred to a</p> <p>4 four-to-one slope, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Do you think those rules apply to</p> <p>7 the slope of the final cover system? Or do they</p> <p>8 apply during the operation of the landfill?</p> <p>9 A. I believe that's the operation.</p> <p>10 Q. Okay. Now, the permit at Joint</p> <p>11 Exhibit 1, Page 9, under Section III, which is</p> <p>12 Solid Waste -- Municipal Solid Waste Landfill</p> <p>13 Requirements, Paragraph J refers to slope as</p> <p>14 well, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And does that talk about face</p> <p>17 slope?</p> <p>18 A. Yes.</p> <p>19 Q. And does that specify the slope</p> <p>20 for the face slope?</p> <p>21 A. Yes.</p> <p>22 Q. And is that four to one?</p> <p>23 A. Yes.</p>	<p>1 A. Are you -- are you asking what</p> <p>2 degree?</p> <p>3 Q. What was -- what was the slope?</p> <p>4 What was the ratio?</p> <p>5 A. Three to one.</p> <p>6 Q. Three to one? Okay. And that's</p> <p>7 on Page 14 of the permit?</p> <p>8 A. And also on another page as well.</p> <p>9 Q. Okay. Let's -- in Exhibit J-1,</p> <p>10 Page 14, it speaks about variances, correct?</p> <p>11 A. Uh-huh (affirmative response).</p> <p>12 Q. And where is the other reference</p> <p>13 to the final slope?</p> <p>14 A. It says on Page -- on Section</p> <p>15 VIII, A.</p> <p>16 Q. Section VIII, A?</p> <p>17 A. Yes.</p> <p>18 Q. All right. What's the purpose of</p> <p>19 the Department regulating either the operational</p> <p>20 face slope or the final slope?</p> <p>21 A. I don't understand the question.</p> <p>22 Q. Why does the Department care about</p> <p>23 slope?</p>

<p style="text-align: right;">Page 281</p> <p>1 A. That's -- I mean, that's -- I'm 2 sure some people would have similar things of 3 why that might matter. It might not matter to 4 other things [verbatim]. You're asking there 5 broadly, through the Department. 6 Q. Do you know what the purpose of 7 the rule is? What it's trying to accomplish? 8 A. Probably erosion. 9 Q. Erosion? And, in fact, 10 doesn't -- let me show you Rule 335-13-4-.20 on 11 Page 4-14 of Exhibit P-6 and ask you if that 12 says anything about erosion. 13 A. Which one am I looking at again? 14 Q. The top -- top of the page. 15 A. That one? 16 Q. Yeah, at the very top of the page. 17 A. It says...it does. 18 Q. It does? And when it refers 19 to -- I'm sorry. 20 Look at the bottom of Page 4-13, where it 21 says, The maximum final grade. 22 Could you read that sentence? 23 A. The maximum final grade of the</p>	<p style="text-align: right;">Page 283</p> <p>1 A. I am. 2 Q. Do you know if the City of Dothan 3 provided any calculations regarding soil loss? 4 A. Yes, they did. 5 Q. Can you show me where that is in 6 the application? 7 A. Oh, yes. It was when the slope 8 stability analysis was here, and you stated it 9 was one of the exhibits. I'm not sure which one 10 it was. 11 Q. Yeah, it should be included in 12 this large volume toward the rear. We'll have 13 to find it. 14 A. They submitted it as a completely 15 different binder. 16 Q. Right. There's a section in here 17 somewhere. 18 A. I believe it was over here, 19 actually. I found it. 20 Q. Can you show me where in that 21 document the City provided soil loss 22 calculations for the three-to-one slope? 23 A. I have no idea exactly where it</p>
<p style="text-align: right;">Page 282</p> <p>1 final cover system shall not exceed 25 percent 2 or as specified by the Department to minimize 3 erosion. 4 Q. To minimize erosion? So that 5 confirms what you thought was the concern of the 6 Department for having a slope rule? 7 A. I believe so. 8 Q. Okay. And when it says 25 9 percent, is that the same thing as four to one? 10 A. Yes, it is. 11 Q. Now, would you expect -- let me 12 ask you this: Are you familiar with the USDA's 13 Universal Soil Loss Equation? 14 A. I am not. 15 Q. Would a slope of three to one 16 create more potential for soil loss by erosion 17 than a slope of four to one? 18 A. I have no idea. 19 Q. And you are an engineer; is that 20 right? 21 A. I believe so. 22 Q. You're a certified professional 23 engineer?</p>	<p style="text-align: right;">Page 284</p> <p>1 is. That's the large document. 2 Q. Pardon me? 3 A. I don't know exactly where it 4 stated it, no. 5 Q. But you think it's in there? 6 A. Maybe. I don't know exactly what 7 you're asking for. 8 Q. Soil loss calculations. 9 A. Possibly. That would be better 10 asked for the people who constructed this. 11 Q. All right. You don't recall 12 seeing any soil loss calculations? 13 A. No, I'm not saying that. I'm 14 recalling -- saying that I don't know where they 15 are. 16 Q. I'm sorry? 17 A. I'm saying I do not know where 18 they are in this actual document. 19 Q. Do you recall seeing them? 20 A. I do not remember. 21 Q. Okay. Did the City provide the 22 Department with an assessment with supporting 23 factual information of the impact of the</p>

<p style="text-align: right;">Page 285</p> <p>1 variance from the four-to-one slope requirement 2 would have on public health and the environment 3 in the affected area? 4 A. I do not remember. 5 Q. If they did, it would have been in 6 the application; is that correct? 7 A. If they did, it would have been in 8 the application or the slope stability analysis. 9 If they did, yes. 10 Q. I'm sorry? 11 A. If they did, yes. 12 Q. If they did? You don't recall -- 13 A. I do not remember. 14 Q. -- where it is, or if it was 15 submitted? 16 A. Correct. 17 Q. Did the City provide the 18 Department with a concise factual statement of 19 the reasons they believe a variance -- or 20 excuse me -- the reasons they believe 21 noncompliance with the four-to-one-slope 22 requirement would not threaten public health or 23 unreasonably create environmental pollutions?</p>	<p style="text-align: right;">Page 287</p> <p>1 A. I guess the permits are written. 2 I mean, saying that we approved it. 3 Q. You approved the landfill? 4 A. The -- we approved the variance. 5 Q. You approved the variance? 6 A. Yes. 7 Q. All right. Did you make a finding 8 in that approval that the variance would not 9 threaten the public health or unreasonably 10 create environmental pollution? 11 A. No, not in this. We typically do 12 not. 13 Q. And does the Final Determination 14 in Exhibit J-1 include a finding that the 15 variance from the slope requirement will not 16 threaten the public health or unreasonably 17 create environmental pollution? 18 A. No. And it is not standard for us 19 to do that. 20 Q. Let me ask you to look at Exhibit 21 P-5, which is the large drawings. On Sheet 22 Number 3, Page -- okay. Do you see 23 sedimentation ponds on Sheet Number 3?</p>
<p style="text-align: right;">Page 286</p> <p>1 A. I do not remember. 2 Q. You do not remember? 3 A. I don't remember. 4 Q. Do you remember seeing it in the 5 application? 6 A. I do not remember, no. I have no 7 idea. 8 Q. Okay. Did the City provide a 9 clear and complete statement of the precise 10 extent of the relief sought? Including specific 11 identification of the particular provisions of 12 the regulations from which the slope variance 13 was sought? 14 A. Possibly. Like I said, I do not 15 remember all these actual questions you're 16 asking me. 17 Q. Did the Department make a written 18 finding that a variance from the four-to-one 19 final slope requirement will not threaten the 20 public health or unreasonably create 21 environmental pollution? 22 A. Did we make a written finding? 23 Q. Yes.</p>	<p style="text-align: right;">Page 288</p> <p>1 A. Yes. 2 Q. Okay. At the bottom right corner 3 of the drawing, it does say Sheet Number 3, 4 correct? 5 A. Yes. 6 Q. Okay. And what sedimentation 7 ponds do you see? How are they labeled? 8 A. One, two, and three. 9 Q. And how are they -- would you 10 indicate the entire label? 11 A. Sediment Pond Number 1, and 12 Sediment Pond Number 2, and Sediment Pond Number 13 3. 14 Q. Okay. Now, do those sediment 15 ponds, are they proposed to have discharges? 16 A. They have an overflow spillway 17 and...yes. 18 Q. Each sediment pond has an overflow 19 spillway? 20 A. Each one? Let's see. Yes. 21 Q. Okay. Now, do you know if 22 those -- do you know where those overflow 23 spillways discharge to?</p>

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<p>1 MR. CARTER: I'm going to object. 2 I mean, this is going into -- I mean, 3 we're going into an NPDES permit 4 question here, and we're here on the 5 solid waste land permit. I don't 6 understand. I'm going to object to 7 relevance. 8 HEARING OFFICER: Overruled. Do 9 you know where they discharge to? 10 THE WITNESS: No, sir. 11 BY MR. LUDDER: 12 Q. Okay. Do you know -- do you know 13 if those discharges are permitted under the 14 NPDES system? 15 A. I do not know for a fact, no. 16 Q. And who would know that? 17 A. The people working in our NPDES 18 section. 19 MR. LUDDER: Okay. No further 20 questions. 21 HEARING OFFICER: I assume y'all 22 have some questions from the 23 Department?</p>	<p>1 in that one right there. Okay. 2 Just to kind of back up just a little bit, 3 now this permit, when it first comes to you, you 4 get it in the form of the application; is that 5 right? 6 A. Correct. 7 Q. And now -- and once your analysis 8 of the application begins, are there -- are 9 there certain things that you look for to make 10 sure they're there? 11 A. Yes, for the most part. 12 Q. Okay. And now in this particular 13 situation of 35-06, this was a modified permit 14 to expand the landfill. So what -- kind of, if 15 you would, just kind of walk through kind of 16 your steps that you take when you first start 17 evaluating an application. 18 A. Well, initially, it's to make sure 19 that everything as far as the application and 20 the fees are correct, is the -- I guess, the 21 first part. And then basically it's 22 just -- I mean, this -- they -- this is the 23 modification. I'm going to start, you know,</p>
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<p>1 MR. WHITE: Yes, sir -- oh, excuse 2 me. 3 HEARING OFFICER: Do you have some 4 questions? 5 MR. CARTER: Yes, I do. 6 HEARING OFFICER: Okay. We've been 7 going on almost two hours. 8 MR. CARTER: That's why I was going 9 to see if Mr. Kelly needs a break. 10 HEARING OFFICER: I was hoping -- I 11 just wanted to make sure you have it. 12 MR. CARTER: Okay. 13 HEARING OFFICER: Let's take a 14 break now. Let's go about 15 minutes. 15 (A brief recess was taken.) 16 HEARING OFFICER: We are on the 17 record. Cross-examination? 18 MR. CARTER: Thank you, Your Honor. 19 CROSS-EXAMINATION 20 BY MR. CARTER: 21 Q. Jared, I know you covered lots of 22 it. Let's go back to Joint Exhibit Number 1, 23 which is the permit. I think it's going to be</p>	<p>1 trying to figure out what the actual 2 modifications are, which would be -- and then 3 going through and making sure everything is 4 lined up with our regulations, basically. 5 Q. Okay. And when you say "lined 6 up," this is an operational permit; is that 7 correct? 8 A. Yes, operational. 9 Q. Okay. Now -- okay. Now, 10 basically, let's just -- I want to just ask some 11 questions -- go ahead and ask. 12 Now, in this particular permit, Mr. Ludder 13 had asked some questions about involving the 14 wetlands on this particular permit. Do 15 those -- does the permit allow construction of 16 landfill cells in the wetland? 17 A. Does the permit allow it? 18 Q. Right. 19 A. I -- no. 20 Q. Okay. And now, also, the 21 permit -- does the permit allow discharge of 22 pollutants into the -- the intermittent streams 23 or waters of the State?</p>

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<p>1 A. No.</p> <p>2 Q. Okay. And now how do you</p> <p>3 know -- is that something you glean from looking</p> <p>4 at the application?</p> <p>5 A. Say that again. I'm sorry.</p> <p>6 Q. Is -- when you make -- when you're</p> <p>7 developing the permit, and those two</p> <p>8 requirements of the permit, I think you</p> <p>9 testified with Mr. Ludder that there</p> <p>10 were -- there was information in the</p> <p>11 application, designation of wetlands from the</p> <p>12 Corps, and things along that line. Is that</p> <p>13 something that's taken into consideration once</p> <p>14 you start evaluating an application?</p> <p>15 A. Yes, yes.</p> <p>16 Q. Okay. And now in this particular</p> <p>17 situation -- now you have testified -- this is</p> <p>18 an operational permit, right?</p> <p>19 A. Yes.</p> <p>20 Q. So at the time this landfill</p> <p>21 begins operation, will there be wetlands</p> <p>22 present?</p> <p>23 MR. LUDDER: Objection. Calls for</p>	<p>1 address filling in of the wetlands or anything</p> <p>2 like that?</p> <p>3 A. No.</p> <p>4 Q. So like you said, it's an</p> <p>5 operational permit; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Now -- and that also</p> <p>8 includes the discharge of fill into the streams?</p> <p>9 A. Yeah, that's all.</p> <p>10 Q. Okay. Now, as it pertains</p> <p>11 to -- Mr. Ludder also asked you about the</p> <p>12 different -- well, y'all got into a conversation</p> <p>13 about variances, okay? First of all, does the</p> <p>14 permit that you drafted allow a variance for</p> <p>15 alternative daily cover?</p> <p>16 A. No.</p> <p>17 Q. Did the City ask for a variance</p> <p>18 for alternative daily cover?</p> <p>19 A. No.</p> <p>20 Q. So I think you -- and if I</p> <p>21 understood you right, you testified that, at</p> <p>22 this time, all they can use would be earth?</p> <p>23 A. Correct.</p>
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<p>1 a legal conclusion.</p> <p>2 HEARING OFFICER: Overruled.</p> <p>3 BY MR. CARTER:</p> <p>4 Q. Now, in this -- okay. Well, and</p> <p>5 you have read the regs. Mr. Ludder showed you</p> <p>6 the regs and everything, and the regs also state</p> <p>7 that a landfill cannot be -- well,</p> <p>8 land -- landfill buffers --</p> <p>9 A. Yes.</p> <p>10 Q. -- all that, cannot be in a</p> <p>11 wetland; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And in your review of the</p> <p>14 application and drafting of the permit, does the</p> <p>15 permit allow that?</p> <p>16 A. The permit does not allow -- it</p> <p>17 only states -- I don't believe it states the</p> <p>18 word "wetland" in the actual permit.</p> <p>19 Q. Okay. But in the application, you</p> <p>20 did see evidence of a wetland?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And when they -- the ADEM</p> <p>23 permit doesn't actually -- I mean, it doesn't</p>	<p>1 Q. Okay. As for the other two</p> <p>2 variances y'all discussed at length, the -- the</p> <p>3 two working faces, now, he was saying was there</p> <p>4 a particular document or anything where there is</p> <p>5 a request for a variance?</p> <p>6 A. The whole application, I guess,</p> <p>7 which is a request for variance.</p> <p>8 Q. Okay. Just, are there any</p> <p>9 particular areas just right offhand where you</p> <p>10 know -- well, I'll withdraw that.</p> <p>11 Let me ask -- okay. I tell you what, let</p> <p>12 me -- let's go to Exhibit 1, Joint Exhibit 1</p> <p>13 there. And go to -- and we'll start with that</p> <p>14 in the last section, Section X, which covers the</p> <p>15 variance. Okay.</p> <p>16 Now, you have read both of those, I</p> <p>17 believe. I'm thinking you read both of those</p> <p>18 before. Now, the first one being that the frame</p> <p>19 of variance for a final -- final grade of three</p> <p>20 to one instead of the four to one, okay?</p> <p>21 A. Correct.</p> <p>22 Q. Okay? If you could, just explain</p> <p>23 for us -- I know that's a lot of documentation</p>

<p style="text-align: right;">Page 297</p> <p>1 there in front of you in this application. Just</p> <p>2 briefly, if you could, could you explain what</p> <p>3 the City submitted to take into consideration as</p> <p>4 on that variance?</p> <p>5 A. Oh, well, the drawings show that</p> <p>6 it's -- that they're three to one in several</p> <p>7 places. It's also mentioned throughout the</p> <p>8 entire application, and then just them</p> <p>9 submitting a slope stability also shows that</p> <p>10 they're requesting --</p> <p>11 Q. And now, just -- because I'm not</p> <p>12 familiar with a slope stability study. I mean,</p> <p>13 to me, it's a huge document.</p> <p>14 A. It is.</p> <p>15 Q. And, I mean, if you would, just</p> <p>16 explain that for us -- for me, I mean. For me</p> <p>17 and anybody else in here who is not quite sure</p> <p>18 what a slope stability study would be.</p> <p>19 A. Basically, it's just showing that,</p> <p>20 you know, the stability of that slope, which</p> <p>21 would be three to one, is -- will hold</p> <p>22 up -- well, that slope will hold up as far as</p> <p>23 the degree that they're trying to -- the three</p>	<p style="text-align: right;">Page 299</p> <p>1 are there different requirements for a C&D face</p> <p>2 and a different requirement for an MSW -- I</p> <p>3 mean, different cover requirements? Excuse me.</p> <p>4 A. Cover requirements?</p> <p>5 Q. Right.</p> <p>6 A. As far as -- what they cover with</p> <p>7 or time?</p> <p>8 Q. I mean, just -- in general. Are</p> <p>9 there different regulations that are pertaining</p> <p>10 to a C&D landfill, and different regulations as</p> <p>11 pertaining to an MSW landfill in their</p> <p>12 operations?</p> <p>13 A. I'm sorry. Ask that question</p> <p>14 again. I'm trying to -- I'm trying to -- it's</p> <p>15 a...</p> <p>16 Q. Okay. I'm just -- it's probably</p> <p>17 my question, excuse me. But, no, we talked</p> <p>18 about the two different working faces.</p> <p>19 A. Yes.</p> <p>20 Q. Now, what led you to believe in</p> <p>21 the application that they needed two different</p> <p>22 working faces?</p> <p>23 A. Yeah, like I said, they mentioned</p>
<p style="text-align: right;">Page 298</p> <p>1 to one.</p> <p>2 Q. And is that based on the design of</p> <p>3 the landfill? Is that what --</p> <p>4 A. It's based on several things. It</p> <p>5 could be anything from, you know, the soil</p> <p>6 characteristics, or it's however the engineers</p> <p>7 come up with --</p> <p>8 Q. So there's a lot of different data</p> <p>9 that they provide in the soil -- soil slope</p> <p>10 stability study; is that right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And now on the other</p> <p>13 variance, when we talked about -- about the</p> <p>14 variance for two working faces. In your review</p> <p>15 of the application, how did you determine that</p> <p>16 they were request -- there was a request for two</p> <p>17 working faces?</p> <p>18 A. Well, basically, because they had</p> <p>19 two different cells. They had a C&D cell and an</p> <p>20 MSW cell which, obviously, would require a</p> <p>21 working face for a C&D and a working face for</p> <p>22 the MSW.</p> <p>23 Q. Okay. When you say "obviously,"</p>	<p style="text-align: right;">Page 300</p> <p>1 they had two different working -- that they had</p> <p>2 two different cells, and then they showed that</p> <p>3 they had two different cells. So, obviously, as</p> <p>4 is, they didn't -- they needed two different</p> <p>5 cells to operate the landfill.</p> <p>6 Q. Okay. And now I think in some of</p> <p>7 the regulations, and some of the languages we</p> <p>8 read about a while ago, now, you draft the</p> <p>9 permit; is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. And now once you are finished</p> <p>12 drafting the permit, and you submit it to your</p> <p>13 next supervisor to review and all that, but</p> <p>14 based on what you had seen in the applications,</p> <p>15 as for the variances, were they clear and</p> <p>16 concise?</p> <p>17 A. Oh, yeah, absolutely.</p> <p>18 Q. Okay. And I think -- one other</p> <p>19 thing really quick. I think there was</p> <p>20 some -- some testimony as to whether</p> <p>21 the -- if -- if this permit didn't -- were</p> <p>22 revised or something along that line, is that</p> <p>23 going to stop the expansion of the landfill?</p>

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<p>1 A. No.</p> <p>2 Q. And do you know -- I mean, why</p> <p>3 would that be?</p> <p>4 A. Because -- because most of this</p> <p>5 stuff that's -- you know, that he was</p> <p>6 questioning has nothing to do with the actual</p> <p>7 expansion, as far as I can tell.</p> <p>8 Q. Okay. The -- when you're looking</p> <p>9 at that application, and like you shared, I</p> <p>10 think Mr. Ludder -- I can't remember what</p> <p>11 exhibit.</p> <p>12 MR. CARTER: No, it would be the</p> <p>13 letter, the Corps letter. Or the</p> <p>14 letter to the Corps.</p> <p>15 A. Oh, the Corps letter would be in</p> <p>16 that. Probably in the actual application.</p> <p>17 Q. Well, I think it may be Joint</p> <p>18 Exhibit Number 7. We'll look at that. Okay.</p> <p>19 And I think -- I was thinking -- okay. And I</p> <p>20 think --</p> <p>21 MR. CARTER: Oh, David, do you</p> <p>22 remember what number you had that?</p> <p>23 MR. LUDDER: On J-7?</p>	<p>1 A. Yes.</p> <p>2 HEARING OFFICER: What's that</p> <p>3 Number?</p> <p>4 MR. CARTER: Oh, Petitioners</p> <p>5 Exhibit --</p> <p>6 THE WITNESS: 7, P-7.</p> <p>7 MR. CARTER: 7.</p> <p>8 HEARING OFFICER: 7?</p> <p>9 MR. CARTER: Yes, sir.</p> <p>10 HEARING OFFICER: I got you.</p> <p>11 BY MR. CARTER:</p> <p>12 Q. Okay. Because there's a couple of</p> <p>13 definitions in here I want to ask you about.</p> <p>14 Now, well -- maybe just one. Okay. If you</p> <p>15 would turn with me. It's 1-16.</p> <p>16 Okay. If you would, read Definition 146.</p> <p>17 A. It's a definition of wetlands. It</p> <p>18 says, Those areas as defined by the U.S. Army</p> <p>19 Corps of Engineers' regulations.</p> <p>20 Q. Okay. Now, and that's part of the</p> <p>21 solid waste regulations that you use to -- to</p> <p>22 evaluate the applications and write the permits?</p> <p>23 A. Correct.</p>
Page 302	Page 304
<p>1 MR. CARTER: Right, but you</p> <p>2 had -- you had also entered it in as a</p> <p>3 separate exhibit number.</p> <p>4 MR. LUDDER: Actually, I didn't</p> <p>5 enter it. I used the version of it</p> <p>6 that was in J-3.</p> <p>7 MR. CARTER: Okay. That's correct.</p> <p>8 I'm sorry about that. Okay.</p> <p>9 BY MR. CARTER:</p> <p>10 Q. Now, you've got in front of you</p> <p>11 Joint Exhibit Number 7, and that's a letter to</p> <p>12 the City of Dothan from the Department of the</p> <p>13 Army Corps of Engineers. Now, you testified</p> <p>14 earlier, was that part of the application?</p> <p>15 A. I believe it was.</p> <p>16 Q. Okay. And what, if anything, when</p> <p>17 you see these in an application, what does that</p> <p>18 mean to you?</p> <p>19 A. It means they're working with the</p> <p>20 Corps to -- to deal with wetlands.</p> <p>21 Q. Okay. And Section 1 -- on</p> <p>22 Petitioners Exhibit 8 [verbatim], if you</p> <p>23 would -- is that the definition? Yeah.</p>	<p>1 Q. Okay. So in conjunction with</p> <p>2 the -- when you run across, like, the letter as</p> <p>3 in Joint Exhibit Number 7, and then based on the</p> <p>4 definition and under the solid waste regs,</p> <p>5 normally, the Corps is involved in some of these</p> <p>6 situations?</p> <p>7 A. Yes.</p> <p>8 MR. CARTER: Okay. Nothing further</p> <p>9 at this time, Your Honor.</p> <p>10 HEARING OFFICER: Mr. White?</p> <p>11 MR. CARTER: Nothing further -- oh,</p> <p>12 I'm sorry.</p> <p>13 CROSS-EXAMINATION</p> <p>14 BY MR. WHITE:</p> <p>15 Q. Mr. Kelly, if you would take P-6</p> <p>16 and --</p> <p>17 A. This?</p> <p>18 Q. Yeah, the regs.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And turn to 335-13-4.</p> <p>21 A. This one?</p> <p>22 Q. Yeah, .01.</p> <p>23 A. .01? Okay.</p>

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<p>1 Q. Just a minute. Let me get it. 2 Excuse me. Go down to (2)(a) under, Water 3 Quality Standards. 4 A. Uh-huh (affirmative response). 5 Q. And could you read that, please? 6 (2)(a)? 7 A. A facility shall not cause a 8 discharge of pollutants into waters of the 9 State, including wetlands, that is in violation 10 of the requirements of the National Pollutant 11 Discharge Elimination System, Alabama Water 12 Pollution Control Act, Code of Alabama. 13 Then it goes on. 14 Q. Okay. A facility shall not cause 15 a discharge of pollutants into waters of the 16 State, including wetlands, that is in violation 17 of the requirements of the National Pollutant 18 Discharge Elimination System, Alabama Water 19 Pollution Control Act, with the citations; is 20 that correct? 21 A. Correct. 22 Q. Okay. If you would, please, turn 23 over to 335-13-1-.03.</p>	<p>1 solid waste, whether or not authorized or 2 permitted, including, but not limited to, waste 3 disposal areas and waste disposed therein. 4 Q. Does that definition tell you when 5 a facility becomes a facility? 6 A. Basically, yeah. 7 Q. When? 8 MR. LUDDER: Objection. Calls for 9 a legal interpretation. 10 Q. What does it say? 11 MR. SASSER: You're Honor, we've 12 been asked -- no, hold on. We've been 13 asked legal questions all dadgum 14 afternoon, Your Honor, and we are just 15 replying in kind. 16 MR. LUDDER: Your Honor, I -- my 17 questions was only what the rules 18 said. 19 MR. SASSER: Well, that's exactly 20 what he's asking, Your Honor. 21 MR. WHITE: That's all I'm asking. 22 What does it say? 23 HEARING OFFICER: Overruled.</p>
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<p>1 A. Definitions? 2 Q. Yeah, you got the definitions? 3 A. Yes, sir. 4 Q. Turn to 47. 5 A. All right. 6 Q. Now, the one you just read, that 7 is (2)(a) under 335-4 says that a facility shall 8 not cause a discharge of pollutants. What is a 9 facility under that definition? 10 A. It states, All contiguous land, 11 structures and other -- I'm not even sure what 12 that is. 13 Q. Appurtenances? 14 A. Appurtenances -- there you 15 go -- used for the processing, treatment, 16 storage -- 17 Q. "Used for the purposes," did you 18 say? 19 A. Yes, sir. 20 Q. Okay. Go ahead. 21 A. Used for the processing, 22 treatment, storage or disposal of solid waste, 23 or the recovery of recyclable materials from</p>	<p>1 MR. WHITE: Thank you. 2 BY MR. WHITE: 3 Q. I believe you just read the 4 definition of a landfill, did you not? I mean, 5 of a facility? You did? 6 A. Yes, sir. Sorry. 7 Q. Okay. Can you read it again? 8 A. Yes, sir. All contiguous land, 9 structures and other appurtenances used for the 10 processing, treatment, storage, or disposal of 11 solid waste. 12 Q. Okay. So when does a facility 13 become a facility? 14 A. Whenever it is used for the 15 processing, treatment, storage, or disposal of 16 solid waste. 17 Q. Okay. Has there been any use made 18 of this proposed facility? 19 A. Not that I'm aware of. 20 Q. Okay. Were you ever aware that 21 the Corps issued a fill permit? 22 A. Yes. 23 Q. Okay. Did you get a copy?</p>

<p style="text-align: right;">Page 309</p> <p>1 A. I did.</p> <p>2 Q. Okay. Did you get that before</p> <p>3 35-06 Mod was issued?</p> <p>4 A. Before? I thought it came</p> <p>5 with -- no, before it was issued? I'm sorry.</p> <p>6 No, it was not -- I did. I apologize. Let me</p> <p>7 back up. That's too many questions. It's</p> <p>8 getting to 5:00.</p> <p>9 Yes, I received it before the mod was</p> <p>10 issued.</p> <p>11 Q. Okay. Got you. Thank you. Now,</p> <p>12 did that permit allow the City to discharge or</p> <p>13 to put solid waste into wetlands?</p> <p>14 A. No.</p> <p>15 Q. Okay. What did it authorize?</p> <p>16 A. Just the operation of a landfill.</p> <p>17 Q. What did -- what did -- no, the</p> <p>18 Corps permit.</p> <p>19 A. I'm sorry.</p> <p>20 Q. What did the Corps permit</p> <p>21 authorize?</p> <p>22 A. That, I'm not sure.</p> <p>23 Q. Okay. Do -- do the plans show</p>	<p style="text-align: right;">Page 311</p> <p>1 we have one, but I think I don't actually</p> <p>2 utilize it each time, no.</p> <p>3 Q. Okay. You stated, I believe, that</p> <p>4 Exhibit J-1, which is the final permit, is an</p> <p>5 operational permit?</p> <p>6 A. Correct.</p> <p>7 Q. Does it have provisions in it</p> <p>8 about construction of the facility?</p> <p>9 A. I don't believe it's a</p> <p>10 construction permit, no.</p> <p>11 Q. You don't believe there's any</p> <p>12 provision in there about construction?</p> <p>13 A. I believe it -- let me see what it</p> <p>14 actually says. It says the Certificate of</p> <p>15 Construction.</p> <p>16 Q. What says that?</p> <p>17 A. Number 12 of E of Section I.</p> <p>18 Q. Can you explain what that</p> <p>19 requirement is?</p> <p>20 A. Basically, it says they just need</p> <p>21 to send something in stating that it has</p> <p>22 been -- that the cell of -- the new cell has</p> <p>23 been constructed in, you know, along the lines</p>
<p style="text-align: right;">Page 310</p> <p>1 whether the fill would be completed before the</p> <p>2 use commenced?</p> <p>3 A. Does it show?</p> <p>4 Q. Does the application -- excuse</p> <p>5 me -- does the application say whether or not</p> <p>6 that construction would be completed before it</p> <p>7 started being used?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. They're not going to get</p> <p>10 halfway through and start depositing waste?</p> <p>11 A. Correct. No.</p> <p>12 Q. Okay. Thank you. And when it is</p> <p>13 completed, will it be located in wetlands?</p> <p>14 A. No.</p> <p>15 MR. WHITE: Okay. That's all.</p> <p>16 HEARING OFFICER: Redirect?</p> <p>17 REDIRECT EXAMINATION</p> <p>18 BY MR. LUDDER:</p> <p>19 Q. Mr. Kelly, do you utilize a</p> <p>20 checklist of any kind when an application comes</p> <p>21 in to evaluate what things to review?</p> <p>22 A. I don't think so. I have -- well,</p> <p>23 I think I have one -- I would say no. I think</p>	<p style="text-align: right;">Page 312</p> <p>1 of the application and the regulations. I can</p> <p>2 read it, actually, to you. It says --</p> <p>3 Q. That's okay. That's okay.</p> <p>4 A. All right.</p> <p>5 Q. Isn't it true that your permit</p> <p>6 can't be issued -- or it's not supposed to be</p> <p>7 issued until all design requirements of the rule</p> <p>8 are met?</p> <p>9 A. I'm not sure on that.</p> <p>10 Q. Is there a rule in Exhibit P-6</p> <p>11 that addresses design requirements?</p> <p>12 A. It says, General Design Standards,</p> <p>13 yes.</p> <p>14 Q. I'm sorry. It says what?</p> <p>15 A. General Design Standards for</p> <p>16 Disposal Facilities.</p> <p>17 Q. All right. Would you turn to that</p> <p>18 rule, please?</p> <p>19 A. All right.</p> <p>20 Q. And we discussed this rule</p> <p>21 earlier. Would you please read that rule?</p> <p>22 A. Yes.</p> <p>23 Q. Paragraph 1 only.</p>

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<p>1 A. Yes. General standards is:</p> <p>2 335-13-4-.12 through 335-13-4-.20 provides</p> <p>3 standards for establishing a landfill unit</p> <p>4 providing that the siting standards of</p> <p>5 335-13-4-.01 have been fully complied with to</p> <p>6 the satisfaction of the Department. Certain</p> <p>7 requirements contained in 335-13-4-.01 through</p> <p>8 335-13-4-.20 may be enhanced or reduced by the</p> <p>9 Department as deemed necessary to comply with</p> <p>10 the Act and this Division.</p> <p>11 Q. So the Rules 335-13-4-.12 through</p> <p>12 335-13-4-.20, those are the design standards</p> <p>13 that have to be addressed by a permit</p> <p>14 application, correct?</p> <p>15 A. It states, Provides standards for</p> <p>16 establishing a landfill unit.</p> <p>17 Q. Do those have to be addressed in</p> <p>18 the permit application?</p> <p>19 A. To the satisfaction of the</p> <p>20 Department.</p> <p>21 Q. They do have to be addressed?</p> <p>22 A. To the satisfaction of the</p> <p>23 Department.</p>	<p>1 that there are slopes addressing -- slopes</p> <p>2 during operation versus final cover system. Do</p> <p>3 you recall it?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know how or whether it's</p> <p>6 engineeringly [verbatim] possible to operate the</p> <p>7 landfill, the proposed landfill, over years and</p> <p>8 years with operational slopes of four to one,</p> <p>9 and then complete the landfill with a final</p> <p>10 slope of three to one?</p> <p>11 A. That's -- I mean that's -- that's</p> <p>12 not for me to determine. That's engineering --</p> <p>13 Q. I'm sorry?</p> <p>14 A. That's not for me to determine.</p> <p>15 That's up to the engineer who designed it.</p> <p>16 Q. All right. So you don't know</p> <p>17 whether that can be achieved?</p> <p>18 A. I would -- I mean, I would assume</p> <p>19 so.</p> <p>20 Q. Because why?</p> <p>21 A. Because that's what we received.</p> <p>22 I mean, I'm not --</p> <p>23 Q. So you're relying entirely on the</p>
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<p>1 Q. Are you agreeing with me that they</p> <p>2 do have to be addressed in the application?</p> <p>3 A. Well, sure.</p> <p>4 Q. Okay. But isn't there a -- a</p> <p>5 qualification to that statement that begins with</p> <p>6 the word, Providing?</p> <p>7 A. Say that again.</p> <p>8 Q. Yeah, don't the words, Providing</p> <p>9 that the siting standards of 335-13-4 --</p> <p>10 MR. CARTER: That's not what it</p> <p>11 says, Your Honor.</p> <p>12 Q. -- dash -- doesn't it include the</p> <p>13 phrase, Providing that the siting standards of</p> <p>14 335-13-4-.01 have been fully complied with to</p> <p>15 the satisfaction of the Department?</p> <p>16 A. Yes, to the satisfaction of the</p> <p>17 Department.</p> <p>18 Q. All right. So am I correct in</p> <p>19 saying that the application has to address</p> <p>20 design standards provided that the siting</p> <p>21 standards have been fully complied with?</p> <p>22 A. Yes.</p> <p>23 Q. Now, we discussed earlier the fact</p>	<p>1 application for your assumption?</p> <p>2 A. The technical part, mostly. Yes.</p> <p>3 Q. But you yourself as an engineer</p> <p>4 don't know, or do you know as an engineer, that</p> <p>5 you can have -- whether you can have an</p> <p>6 operational slope of four to one over the life</p> <p>7 of the facility, active life, and then close the</p> <p>8 landfill with a final slope of three to one?</p> <p>9 A. Yes.</p> <p>10 Q. You think that can be done?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay. Do you know -- and I think</p> <p>13 we may have covered this earlier -- you</p> <p>14 discussed the slope -- excuse me -- yeah, the</p> <p>15 slope -- I guess -- what's the stability</p> <p>16 analysis called?</p> <p>17 A. Yes, it's --</p> <p>18 Q. What's it called?</p> <p>19 A. I believe it's called the "slope."</p> <p>20 I don't know exactly the actual wording. I</p> <p>21 would have to look at it myself. I'm looking at</p> <p>22 the wrong one. He has it. Yeah. Maybe I'm not</p> <p>23 looking at the wrong one. No, I was looking at</p>

<p style="text-align: right;">Page 317</p> <p>1 the right one. It is the static stability 2 analysis. 3 Q. All right. Static stability 4 analysis. Is it your contention that that 5 static stability analysis addresses erosion? 6 A. Yes. 7 Q. And where does it address erosion? 8 A. That's somewhere in it. I don't 9 know exactly the -- the outline of -- I 10 didn't -- I didn't construct this, so I couldn't 11 tell you exactly where's -- I'd have to go 12 through the whole thing. 13 Q. Okay. And I believe you testified 14 earlier that you don't know whether there are 15 soil loss calculations in that document, 16 correct? 17 A. Yes. I do not know if it is, or 18 is not. 19 Q. Okay. 20 A. I cannot recall. 21 Q. You testified on cross-examination 22 about the working faces, that there were going 23 to be two cells on the facility?</p>	<p style="text-align: right;">Page 319</p> <p>1 be constructed at different times? 2 A. Do I know for a fact? 3 Q. Yes. 4 A. I would say, no. But common sense 5 says, yes. And it might actually mention that 6 in the application, that it will go in that 7 sequence, I just don't know off the top of my 8 head. 9 Q. Have you ever known any landfills 10 to operate -- to construct multiple cells at one 11 time? 12 A. Not labeled differently. 13 Q. But they have had multiple cells? 14 A. But they were called -- well, they 15 were -- well, no. They were all called one. 16 Q. Multiple cells designated as 17 one -- one number? Is that what you mean? 18 A. I would say, no. No, I do not 19 know if they opened multiple cells at one time. 20 Q. Who -- you referred to the next 21 supervisor that would review, I guess, the 22 application and the draft permit that you 23 prepared. Who would that be?</p>
<p style="text-align: right;">Page 318</p> <p>1 A. Uh-huh (affirmative response). 2 Q. Aren't there three cells in the 3 municipal waste solid -- municipal solid waste 4 expansion area? 5 A. Yes, but only one at time. 6 Q. And did the permit say that they 7 will sequence them that way? 8 A. I believe so. 9 Q. The permit does? 10 A. The permit? Oh, the permits 11 doesn't answer -- doesn't even mention the 12 sequence of -- 13 Q. Okay. Does the application 14 mention the sequence? 15 A. Well, it says, Cell 6, Cell 7, 16 Cell 8, so I would -- that's what I would 17 assume. And it might say something. I'm not 18 sure. 19 Q. You're not sure? Do you know from 20 the fact that it says Cell L-6, Cell L-7, and 21 Cell L-8, that they will -- that they will be 22 constructed at different times merely from that 23 designation? Do you know that they're going to</p>	<p style="text-align: right;">Page 320</p> <p>1 A. Scott Story. 2 Q. Now, you also testified that the 3 wetlands and streams has nothing to do with the 4 expansion. Isn't this landfill going to be 5 constructed in an area where wetlands and 6 streams exist today, as shown in Exhibit P-4? 7 A. I mean, it's not up to me to 8 determine what is considered a wetland. 9 Q. I'm sorry? 10 A. It's not up to me to consider what 11 is considered a wetland. This is done by 12 someone else. 13 Q. Now, we talked about the 14 definition of "facility," and you made the point 15 that the definition of "facility" included, I 16 think -- 17 MR. WHITE: 335-13-4, (2)(a), 18 Definition is at 47. 19 MR. LUDDER: Right. 20 BY MR. LUDDER: 21 Q. You made the point that until 22 the -- the land is used for the processing of 23 treatment -- for the processing, treatment,</p>

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<p>1 storage or disposal of solid waste, I believe 2 your point was that it was not a facility at 3 that point? If -- I'm sorry -- I withdraw the 4 question. 5 I believe your point was that if the land 6 was not being used for processing, treatment, 7 storage or disposal of solid waste, it was not a 8 facility; is that right? 9 A. I wasn't making a point. I was 10 simply reading the definition, as I was asked. 11 Q. Okay. 12 MR. LUDDER: Your Honor, I want to 13 make sure that we've admitted some of 14 these exhibits before he gets off. 15 HEARING OFFICER: All right. 16 Sounds good. 17 MR. LUDDER: I offer Exhibit J-1, 18 the permit. 19 HEARING OFFICER: It's admitted. 20 (Exhibit No. J-1 was admitted 21 into evidence.) 22 MR. LUDDER: Exhibit J-3, Parts I 23 through III.</p>	<p>1 MR. LUDDER: P-6 and -7, which were 2 the regulations. 3 HEARING OFFICER: They're already 4 in. 5 MR. LUDDER: Okay. And J-7? 6 HEARING OFFICER: J-7? I don't 7 have a note on it. 8 MR. LUDDER: I withdraw that, Your 9 Honor. We've already addressed it in 10 a different exhibit. With that, I'm 11 done, Your Honor. 12 HEARING OFFICER: All right. 13 Recross? 14 MR. CARTER: Just -- okay. 15 RECROSS EXAMINATION 16 BY MR. CARTER: 17 Q. Jared, if you would, the 18 operations manual. I believe it's 19 under -- yeah, under there. And if you would, 20 would you turn -- it's Page 4.1. 21 MR. CARTER: It's on toward the 22 back, Your Honor. It's the way it's 23 set up. It's kind of...</p>
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<p>1 HEARING OFFICER: Wait a minute. 2 What was that? J -- what? 3 MR. LUDDER: J-3, Parts I through 4 III. 5 HEARING OFFICER: I know there's 6 been a lot of testimony on those, but 7 are they broken down, so that those 8 individual parts can come in? Any 9 objection? 10 MR. WHITE: No objection. 11 MR. CARTER: No objection. 12 (Exhibits No. J-3, Parts I 13 through III were collectively 14 admitted into evidence.) 15 MR. LUDDER: Exhibit J-9, which 16 was -- J-9 was the Corps of Engineers' 17 public notice. 18 HEARING OFFICER: No objection they 19 be admitted? 20 MR. WHITE: No, sir. 21 MR. CARTER: No objection. 22 (Exhibit No. J-9 was admitted 23 into evidence.)</p>	<p>1 A. It's an operations manual? Okay. 2 Q. Right. 3 A. Flip on one of his actual -- not 4 of any type of a report -- of wetland? Or 5 anything like that? 6 Q. Yeah, Page 4.1 of the operations 7 manual. 8 A. This isn't the beginning, is it? 9 Q. I think it's on -- 10 A. It's before the wetland thing, 11 right? 12 HEARING OFFICER: I think it was 13 after. 14 MR. CARTER: After. 15 THE WITNESS: After? Okay. 16 MR. LUDDER: Is that Page or 17 Section 4.1? 18 MR. CARTER: It's -- it looks like 19 Section 4.0, and down here, it's noted 20 as 4.1. 21 MR. SASSER: 4-1. 22 MR. WHITE: Landfill Design? 23 MR. SASSER: Landfill Design?</p>

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<p>1 THE WITNESS: Okay.</p> <p>2 MR. DAVIS: David, you've got a</p> <p>3 computer.</p> <p>4 THE WITNESS: There it is. All</p> <p>5 right.</p> <p>6 BY MR. CARTER:</p> <p>7 Q. Okay. You were asked a question a</p> <p>8 few minutes ago by Mr. Ludder about sequencing?</p> <p>9 A. Sure.</p> <p>10 Q. Is that -- does that part of the</p> <p>11 operation manual reference sequencing and</p> <p>12 design?</p> <p>13 A. It does.</p> <p>14 Q. Okay. What does it say?</p> <p>15 A. It says, MSW Expansion Cell 6</p> <p>16 through 8 is designed for sequential development</p> <p>17 and filling process as shown on the Permit</p> <p>18 Plans.</p> <p>19 Q. Okay. And as on the permit plans,</p> <p>20 I think you identified that as Cells 6, 7, and</p> <p>21 8?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. Now, if you would, go to</p>	<p>1 Application hereby incorporated by reference and</p> <p>2 hereinafter referred to as the Application.</p> <p>3 MR. CARTER: Okay. That's all I</p> <p>4 have. Thank you.</p> <p>5 HEARING OFFICER: Mr. White?</p> <p>6 MR. WHITE: Yes, sir.</p> <p>7 RECROSS EXAMINATION</p> <p>8 BY MR. WHITE:</p> <p>9 Q. If you would, if you'd look at</p> <p>10 Section 7.3 of the operations manual, otherwise</p> <p>11 identified as P-3 [verbatim], I believe. And</p> <p>12 read, under 7.3.</p> <p>13 A. Defining Waste Area?</p> <p>14 Q. Please.</p> <p>15 A. The Landfill Operator shall</p> <p>16 confine the waste in as small an area as</p> <p>17 practical that still allows for adequate</p> <p>18 equipment operation.</p> <p>19 Q. Okay. What section of the</p> <p>20 operation manual is that in, as denominated on</p> <p>21 the top of the page?</p> <p>22 A. What section? It's 7.3 of the</p> <p>23 operations manual.</p>
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<p>1 J-1.</p> <p>2 A. Just the permit?</p> <p>3 Q. All -- yeah. You are correct,</p> <p>4 that is the permit. I think it's -- it looks</p> <p>5 like it says Page 1 of 14.</p> <p>6 A. 1? Okay.</p> <p>7 Q. Right.</p> <p>8 A. All right.</p> <p>9 Q. Okay. Now, on that</p> <p>10 particular -- on that part of the permit, does</p> <p>11 it mention anything about -- does the</p> <p>12 application become part of the permit?</p> <p>13 A. Does it become part of the permit?</p> <p>14 I believe it's -- it's -- yes. It is</p> <p>15 incorporated by reference.</p> <p>16 Q. Right. In that third paragraph,</p> <p>17 basically?</p> <p>18 A. Yes.</p> <p>19 Q. If you would read that for me.</p> <p>20 A. This permit is based on the</p> <p>21 information submitted to ADEM on October 18th,</p> <p>22 2012, for permit renewal, on January 26th, 2015</p> <p>23 for permit modification, and known as the Permit</p>	<p>1 Q. Okay. And does that make any</p> <p>2 references to whether it's construction or</p> <p>3 municipal?</p> <p>4 A. It does not.</p> <p>5 Q. Okay. All right. Look at the</p> <p>6 beginning of that chapter.</p> <p>7 A. Okay.</p> <p>8 Q. Does that make the reference as to</p> <p>9 whether it's MSW or C&D?</p> <p>10 A. Yes, it does.</p> <p>11 Q. Okay. And what is it?</p> <p>12 A. It's requirements for MSW</p> <p>13 disposal.</p> <p>14 Q. Okay. And so Chapter 7.0 of the</p> <p>15 operation manual provides for requirements for</p> <p>16 disposal of municipal waste?</p> <p>17 A. Correct.</p> <p>18 Q. And under the section you just</p> <p>19 read, 7.3, under Specific Requirements for MSW</p> <p>20 Disposal, there is a specific requirement, is</p> <p>21 there not?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. If you would, please, turn</p>

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<p>1 over --</p> <p>2 MR. WELLS: Section 8?</p> <p>3 Q. Section 8. And would you read the</p> <p>4 requirement -- are there requirements under</p> <p>5 Section 8?</p> <p>6 A. Yes.</p> <p>7 Q. What are they?</p> <p>8 A. Specific Requirements for</p> <p>9 Construction and Demolition Disposal.</p> <p>10 Q. Okay. Different set of</p> <p>11 requirements for a different kind of waste?</p> <p>12 A. Correct.</p> <p>13 Q. All right. We were talking about</p> <p>14 municipal waste. Section 8 talks about what?</p> <p>15 A. Construction and demolition waste.</p> <p>16 Q. Is there a requirement for</p> <p>17 compliance with regulations for a</p> <p>18 face -- operating face for both municipal waste</p> <p>19 and construction and demolition waste?</p> <p>20 A. I do not see it.</p> <p>21 Q. Look again.</p> <p>22 A. The actual waste? I'm sorry. Can</p> <p>23 you ask that question again? I'm sorry. I</p>	<p>1 A. Correct.</p> <p>2 Q. And both of them, each of them,</p> <p>3 are required and designed to meet State</p> <p>4 regulations? And that is: As small an area as</p> <p>5 possible; is that correct?</p> <p>6 A. Yes.</p> <p>7 MR. LUDDER: Objection.</p> <p>8 HEARING OFFICER: Overruled.</p> <p>9 BY MR. WHITE:</p> <p>10 Q. Let me show you P-5. And I don't</p> <p>11 know how to denominate this, other than this is</p> <p>12 the final grading plan, under P-5.</p> <p>13 A. Page number?</p> <p>14 Q. Page 5, thank you. P-5. And ask</p> <p>15 you if you can identify that drawing.</p> <p>16 A. It's the final grading plan.</p> <p>17 Q. Okay. Does it show the slope that</p> <p>18 the application is requesting to be approved in</p> <p>19 their permit for the final grade or cover? Look</p> <p>20 in the yellow part.</p> <p>21 A. Thank you. Yes, it does.</p> <p>22 Q. What is it?</p> <p>23 A. It is three to one for the MSW,</p>
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<p>1 misunderstood.</p> <p>2 Q. Okay. My question is: You</p> <p>3 testified that there is a requirement that all</p> <p>4 waste shall be confined to as --</p> <p>5 A. Yes.</p> <p>6 Q. -- small an area as possible as</p> <p>7 far as the disposal of municipal solid waste?</p> <p>8 A. Yes.</p> <p>9 Q. Is there a similar requirement for</p> <p>10 construction waste under Chapter 8?</p> <p>11 A. Yes, sorry.</p> <p>12 Q. Thank you. Would you read it?</p> <p>13 A. All waste shall be confined to as</p> <p>14 small an area as possible and placed onto an</p> <p>15 appropriate slope not to exceed four to one, 25</p> <p>16 percent, or as approved by the Department.</p> <p>17 Q. Okay. So you had an</p> <p>18 operation -- an application for a face for</p> <p>19 construction [verbatim] waste, and you had an</p> <p>20 application -- the same application -- include a</p> <p>21 face for construction and demolition waste?</p> <p>22 A. Yes.</p> <p>23 Q. Hence, two faces?</p>	<p>1 and four to one for the C&D.</p> <p>2 Q. Okay. So you've got a request</p> <p>3 here that you approve a slope that is at</p> <p>4 variance with the regulations; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you knew that when you saw</p> <p>7 that?</p> <p>8 A. Uh-huh (affirmative response).</p> <p>9 Q. It was not four to one, was it?</p> <p>10 A. No.</p> <p>11 Q. Okay. And is that why the permit</p> <p>12 says that a variance for three to one is</p> <p>13 approved?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Are there other -- in the</p> <p>16 interest of expediting things -- are there other</p> <p>17 references to that slope request in the</p> <p>18 application other than the drawing there at P-5,</p> <p>19 Page 5?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 A. Yes.</p> <p>23 MR. WHITE: That's all.</p>

1 HEARING OFFICER: Anything further
2 from this Witness?
3 MR. LUDDER: Nothing further.
4 HEARING OFFICER: Everybody got
5 their exhibits in that they need? May
6 Mr. Kelly be excused? He is excused.
7 Thank you, sir.
8 THE WITNESS: Thank you.
9 MR. SASSER: Your Honor, we're done
10 with him, but we would -- since he is
11 on our witness list, we would like to
12 reserve in case we need to call
13 him -- I mean, you can go.
14 THE WITNESS: Sure.
15 HEARING OFFICER: Okay. That means
16 you need to be available.
17 THE WITNESS: Yes, sir, no problem.
18 HEARING OFFICER: And you won't be
19 allowed to sit in on this, all right?
20 THE WITNESS: Okay.
21 HEARING OFFICER: All right. Thank
22 you, sir.
23 All right. I think that we'll stop

1 here for today.
2 MR. WHITE: Thank you.
3 HEARING OFFICER: And reconvene in
4 the morning at -- y'all want to go
5 9:00 again? 9:00?
6 MR. CARTER: Yes, sir. That's
7 fine.
8 HEARING OFFICER: See you here at
9 9:00. Thank you, gentlemen.
10 MR. CARTER: Thank you.
11 (Whereupon, the hearing
12 adjourned at 4:40 p.m.)
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1 REPORTER'S CERTIFICATE
2 STATE OF ALABAMA
3 MONTGOMERY COUNTY
4 I, Patrick Miller, Alabama Certified
5 Court Reporter No. 2037, and Commissioner for the
6 State of Alabama at Large, hereby certify that on
7 Tuesday, May 31st, 2016, I reported the TESTIMONY
8 AND PROCEEDINGS in the matter of the foregoing
9 cause, and that the pages herein contain a true and
10 accurate transcription of said proceedings.
11 I further certify that I am neither kin
12 nor of counsel to the parties to said cause, nor in
13 any manner interested in the results thereof.
14 This 9th day of June, 2016.
15
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18
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22
23

PATRICK MILLER, ACCR-2037
Commissioner for the
State of Alabama at Large
MY LICENSE EXPIRES: 8/24/16
MY COMMISSION EXPIRES: 2/19/19

**Bobby Lewis and Michael Del Vecchio v.
Alabama Department of Environmental Management**

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